UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MASSACHUSETTS - BOSTON

IN THE MATTER OF:	.	Case #15-11362
	.	
DAMIAN ANKETELL	.	Boston, Massachusetts
	.	**February 25, 2016**
Debtor.	.	9:38:44 A.M.
TIM SMITH, *et al.*,	.	
	.	
Plaintiffs,	.	
	.	
v.	.	AP #15-01124
	.	
DAMIAN ANKETELL,	.	
	.	
Defendant.	.	
DAMIAN ANKETELL,	.	
	.	
Plaintiff,	.	
	.	
v.	.	AP #15-01117
	.	
TIM SMITH, *et al.*,	.	
	.	
Defendants.	.	

TRANSCRIPT OF TRIAL (MORNING SESSSION) RE:
(15-01124:) [#41] MOTION FILED BY DEFENDANT DAMIAN ANKETELL FOR SUMMARY JUDGMENT WITH CERTIFICATE OF SERVICE (REGAN, JOHN); [#42] BRIEF/MEMORANDUM OF LAW IN SUPPORT (RE: 41 MOTION FOR

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**SUMMARY JUDGMENT FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN);
[#43] STATEMENT IN SUPPORT WITH CERTIFICATE OF SERVICE (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN);
[#44] AFFIDAVIT OF JOHN REGAN IN SUPPORT (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (ATTACHMENTS: #1 EXHIBIT 1, #2 EXHIBIT 2, #3 EXHIBIT 3, #4 EXHIBIT 4, #5 EXHIBIT 5, #6 EXHIBIT 6, #7 EXHIBIT 7, #8 EXHIBIT 8, #9 EXHIBIT 9) (REGAN, JOHN);
[#51] MEMORANDUM OF LAW AND FACT IN OPPOSITION TO (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY PLAINTIFFS THERESA DIPIRO, TIMOTHY SMITH;
[#52] EXHIBIT (RE: 51 MEMORANDUM OF LAW AND FACT IN OPPOSITION TO 41 MOTION FOR SUMMARY JUDGMENT) FILED BY PLAINTIFFS THERESA DIPIRO, TIMOTHY SMITH;
[#57] AFFIDAVIT OF JOHN REGAN IN SUPPORT (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (ATTACHMENTS: #1 EXHIBIT A, #2 EXHIBIT B) (REGAN, JOHN);
TRIAL DAY 1: [#1] VERIFIED COMPLAINT BY TIMOTHY SMITH, THERESA DIPIRO AGAINST DAMIAN ANKETELL;
NATURE OF SUIT (62 (DISCHARGEABILITY - 523(a)(2), FALSE PRETENSES, FALSE REPRESENTATION, ACTUAL FRAUD)), (68 (DISCHARGEABILITY - 523(a)(6), WILLFUL AND MALICIOUS INJURY)), (14 (RECOVERY OF MONEY/PROPERTY - OTHER))
DIPIRO, THERESA AND SMITH, TIMOTHY
PRO-SE PLAINTIFFS (REGAN, JOHN, COUNSEL FOR DEFENDANT);
[#58] JOINT PRE-TRIAL STATEMENT WITH CERTIFICATE OF SERVICE FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN);
(15-01117:) TRIAL DAY 1: [#1] COMPLAINT BY DAMIAN ANKETELL AGAINST TIMOTHY SMITH, THERESA DIPIRO; NATURE OF SUIT (91 (DECLARATORY JUDGMENT), (02 (OTHER (e.g., OTHER ACTIONS**

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<u>Electronic Sound Recording Operator</u>: Elizabeth Lombard

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THAT WOULD HAVE BEEN BROUGHT IN STATE COURT IF UNRELATED TO BANKRUPTCY)) (REGAN, JOHN, COUNSEL FOR PLAINTIFF, DIPIRO, THERESA AND SMITH, TIMOTHY, PRO-SE DEFENDANTS) BEFORE THE HONORABLE JUDGE FRANK J. BAILEY, J.U.S.B.C.

APPEARANCES:

For Debtor/Plaintiff/ Defendant Damian Anketell:	JOHN J. REGAN, ESQ. Dolan and Regan 10 Chestnut Street Peabody, Massachusetts 01960
For Plaintiff/Defendant Tim Smith:	TIM SMITH, *Pro Se* 53 Marlboro Street Newburyport, Massachusetts 01950
For Plaintiff/Defendant Theresa DiPiro:	THERESA DiPIRO, *Pro Se* 53 Marlboro Street Newburyport, Massachusetts 01950

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Plaintiffs' Witnesses:				
DAMIAN ANKETELL				
By Ms. DiPiro	29			
DAVID JAQUITH				
By Ms. DiPiro	92			
PAUL LANCE, JR.				
By Ms. DiPiro	97			
By Mr. Regan		100		
CHRISTOPHER JOE LEBLANC				
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(9:38 a.m.)

THE CLERK: The Court is now in session.

THE COURT: Be seated.

THE CLERK: This is adversary proceeding 15-1124, Smith, *et al.* v. Anketell. It's a hearing on document number 41, motion filed by the defendant Damian Anketell for summary judgment. It is also a trial and it is also adversary proceeding 15-1117, Anketell v. Smith, *et al.*, and it's a hearing on a trial.

Will the parties please state their names for the record?

MR. REGAN: Good morning, Your Honor. John Regan representing Damian Anketell, who is with me.

MR. SMITH: Good morning, Your Honor. Tim Smith and Theresa DiPiro, *pro se* litigants, actually.

THE COURT: Very good. Good morning, everyone.

1. THE PARTIES: Good morning.

THE COURT: All right. So the first thing we have on the docket today is a motion for summary judgment and I've had an opposition filed to the motion for summary judgment. Let me -- let me deal with that first. I don't need argument on it. I have read everything and I'm prepared to rule.

First, I'll start with this. This Court is here to adjudicate dischargeability. The question is that's uniquely before a bankruptcy court in such -- in such a case is whether or not the creditors, in this case Mr. Smith and Ms. DiPiro, have a right to continue to collect amounts that they say are due to them from the debtor or whether the debtor should receive a full discharge. There are about eight counts in this complaint and I'm merely here to adjudicate two of them. The two that matter in this context are a claim under 520 -- 11 U.S.C. Section 523(a)(2)(A) and Section 11 U.S.C. -- and 11 U.S.C. Section 523(a)(6). I will proceed with those matters. The remaining counts in the complaint are not appropriate for my determination here and I am going to strike those without prejudice to them being renewed in another court at an appropriate time. Another way to say it is I'll dismiss them.

So you come here, you make a determination if you can, if the evidence warrants it that Mr. Anketell should continue to be -- that you can continue your -- your right to collect against him with respect to any -- anything that you can prove -- any damages you can ultimately prove, but I'm not going to -- I'm not going to make that determina -- I'm going to make only that determination. I'm not going to make any determination about the other common law state and statutory claims that were in your complaint. I know that you didn't write that complaint. It's -- it was written by your counsel. It is not uncommon that lawyers include those counts but it is also not uncommon that we don't address them. So I'm a court of limited and special jurisdiction and I'll deal with it that way. Okay, so that's the first thing that I'm going to do today.

Now I'm going to rule on the motion for summary judgment as to 523(a)(2)(A) and (a)(6). All right. I'll start with 523(a)(6) -- under Section 11 U.S.C. §523(a)(6). A debt is -- is not discharged in the event that that debt is for willful and malicious injury by the debtor to another entity or to the property of another entity. What the defendant, Mr. Anketell, has moved for summary judgment on that count and his basis for moving for summary judgment on that count is deposition testimony given by each of the plaintiffs that they -- in which he says they conceded that they had suffered no personal injury and had suffered no willful injury as a result of Mr. Anketell's conduct.

That misstates the purpose of 523(a)(6). 523(a)(6) could be directed at that kind of injury but in this case, from what I understand, is not directed at that kind of injury. What they say is that he damaged their home, that he damaged their property through his -- through his conduct and that the debt arose from a willful and malicious conduct on his part as those words are defined in the cases that apply in this Court. And, therefore, I find that the -- it is not appropriate for me to enter judgment for Mr. Anketell as a matter of law and there are continuing and existing genuine issues of material fact suitable for trial under (a)(6), so I'll deny the motion.

Let me turn my attention to 523(a)(2)(A). Section 523(a)(2)(A) of Title 11 of the United States Bankruptcy Code provides that there is an exception for the discharge for any debt that is for "money, property, services or an extension, renewal or refinancing of credit to the extent obtained by: (a) false pretenses, a false representation or actual fraud other than a statement respecting the debtor's or an insider's financial condition."

So this is a count that -- or this is a statute that says that where someone acts in a fraudulent fashion, where someone undertakes, makes fraudulent misrepresentations that are relied upon in a justifiable manner that result in damages or injury to plaintiff such as the -- as the Smiths -- can I call you the Smiths collectively -- that that cause of action -- that debt is not dischargeable.

At a minimum, what the Smiths seem to be saying is that Mr. Anketell told them at least -- and there are others I believe -- at the least the following: that he told them that he had experience in doing projects such as their home construction project, which they say and they tell me this in their opposition was false; they say that he told them that he had significant other projects at hand; and that -- and they say that they relied on that in deciding to retain him; and they say and if that were proved to be true that would be a fraudulent misrepresentation whether it meets all of the other requirements of actual fraud under this section. We'll find out but -- but they have contested that matter. They have put forth facts sufficient to -- to -- for -- sufficient for me to find that there's a material issue. There's a genuine issue of material fact suitable for trial and for that reason I am going to deny the motion for summary judgment as to that count.

So we will proceed to trial now on a -- on 523 -- 11 U.S.C. §523(a)(2)(A) and (a)(6).

All right. Any questions on how at all I recognize that I have -- the Smiths are proceeding *pro se* and, you know, my job here is certainly not to counsel you. My job here is to insure a fair trial and to have -- have both sides have an opportunity to put forth such facts as they think I should consider in determining whether the Smiths have met their burden and the burden is on you to establish by -- to establish that this discharge should not enter as to your debts.

So any questions or comments, any housekeeping matters I say before we start?

MR. REGAN: No, Your Honor.

THE COURT: All right. Thank you, Mr. Regan.

MR. SMITH: No, Your Honor.

THE COURT: All right. So here's how I see it going. You'll go first. All right. You're going to call such witnesses as you -- well, first of all, you can decide if you want to make a brief opening statement. You'll be given that opportunity if you'd like. I'll ask both sides if they would like to do that and then you'll call such witnesses as you think are necessary.

So let me stop there for a moment. I'll ask both sides. Do you want to make an opening statement?

MR. SMITH: We do, Your Honor.

THE COURT: All right. How much time do you think you need for that?

MR. SMITH: Sixty seconds.

THE COURT: Sixty seconds. All right.

MR. SMITH: I mean, I might go over.

THE COURT: All right. As long as it doesn't go over by -- by 10, 15 minutes that's -- that's fine.

Mr. Regan, are you going to do that, too?

MR. REGAN: Your Honor, you've digested the summary judgment materials and I don't think my open -- any opening would add significantly to that.

THE COURT: I'll let you decide after you hear the 60 seconds.

MR. REGAN: Thank you, Your Honor.

THE COURT: All right. The next question is to the Smiths. Who do you expect to call today or at this trial?

MR. SMITH: So we expect to call --

THE COURT: Just -- all right. Speak -- look at me.

MR. SMITH: Yeah. But I apologize.

THE COURT: Speak into the microphone. Okay. Tell me who you expect to call.

MR. SMITH: Sure. David Jaquith, Chris LeBlanc and Paul Lance. You want me to describe who they are?

THE COURT: I -- that's okay. I think I have it. Are you --

MR. SMITH: And Damian Anketell as well.

THE COURT: Okay. So you're going to call four people including the defendant. Are you going to testify?

MR. SMITH: We are. We are.

THE COURT: Both of you?

MS. DIPIRO: Yes.

MR. SMITH: We plan to.

THE COURT: Okay.

MR. SMITH: Yes.

THE COURT: All right. So -- and so there's always an interesting question about what happens when someone who's acting as their own counsel also testifies.

MR. SMITH: Right.

THE COURT: And so the way that I generally handle that is that I would have you sworn at that point to tell the truth. I would have you then assume the witness box and I would have you tell me what you want to tell me. It doesn't have to be in a question-and-answer format. You can just tell me what you want to tell me, but I would ask you to tell -- I'll warn you about this later -- tell me it slowly because it puts Mr. Regan in an awkward position. I've been in issues. It's difficult because he may want to object to something that you're saying, but without a Q&A it makes it harder for him. But I'm not going to make it a strained situation where it's a Q&A and then he'll have a chance to cross-examine you. So it looks like we have -- you have a total of six people that are going to ultimately testify today.

MR. SMITH: That's right. I think Valerie Teller (phonetic) was listed but I don't think she's going to be present today.

THE COURT: Okay. All right.

Mr. Regan, what do you have -- what do you think you have?

MR. REGAN: As far as I can tell, if I may, I may reserve the right to put Mr. Anketell on --

THE COURT: Sure.

MR. REGAN: -- for defendants' direct. Otherwise, I expect the other witnesses will be handled on cross.

THE COURT: That's fine. So I'm going to be fairly lax. I'll relax the rules on -- I'm not going to go through the silliness of having those witnesses testify once in your case and then have Mr. Regan have to call them in, but I'm going to be -- he can cross-examine them, but I'm going to ask him to adjust his questions so that he gets all of the evidence that he'll want from them without prejudice to him calling anybody he wants if they're on your list on -- in his case as well. Certainly his client. But, okay. Any questions about where we are?

MS. DIPIRO: No.

MR. SMITH: No.

THE COURT: Okay. Let's get started.

MR. SMITH: So, like I said, this will be a brief opening statement and --

THE COURT: So why don't you come up here?

MR. SMITH: Okay. Sure.

THE COURT: Is that okay with you?

MR. SMITH: Oh, sure. Yeah.

THE COURT: It's better for me.

MR. SMITH: Right here?

THE COURT: Yeah. Right there. All right. That will give you a little desk space and there's a -- this thing next to you is a evidence presenter.

MR. SMITH: Yes. Okay.

THE COURT: It's just like the old overhead projectors --

MR. SMITH: Right.

THE COURT: -- in grade school. If you put something on it we can all see it. All right. So --

MR. SMITH: Okay. I'm just going to read off of it if that's okay.

THE COURT: Well, you don't want -- okay. We'll take --

MR. SMITH: I'm just --

THE COURT: We'll take it from there.

MR. SMITH: Okay.

THE COURT: This is for evidence.

MS. DIPIRO: Evidence.

MR. SMITH: Right.

THE COURT: Before I go any further I have a binder in front of me and I thank the Smiths for putting this together. I understand --

MS. DIPIRO: You're welcome.

THE COURT: -- you did it. You're way ahead of most lawyers already. So -- and what I have in front of me are a book of exhibits and they are letter marked with -- from A through KK and my question to you is, are these exhibits all -- are they joint exhibits at this point?

MR. REGAN: They are not, Your Honor.

THE COURT: Okay.

MR. REGAN: I don't know if you wanted me to address that but, no, they're not joint.

THE COURT: All right. Well, then why don't we just take them one by one? So you're going to need to move the admission of any of these exhibits that you want in --

MR. SMITH: Right.

THE COURT: -- right? And we'll see if there's an objection as we go through it. I do want you to tell me why I should consider the exhibit --

MR. SMITH: Sure.

THE COURT: -- in any event. I suspect a lot of these are going to be things that Mr. Regan won't have a problem with, the contract, a bunch of other things but --

MR. SMITH: He did object to all of them, I believe.

THE COURT: Well, that's unreasonable. So I'll deal with that, all right?

MR. SMITH: Okay.

THE COURT: That -- if -- if a lawyer objects to every one of these, including the contract --

MR. REGAN: No, Your Honor.

MR. SMITH: Except the contract, I think.

MR. REGAN: No, Your Honor. Just so it's clear, there are three of those exhibits to which we do not agree -- we do not object.

THE COURT: Okay.

MR. REGAN: The contract, the note and there are some documents concerning the charge-back. The other exhibits that he has in there we do object to and I'll certainly be happy to address the reasons as we proceed.

THE COURT: All right. Well, we'll take it -- we'll take it item by item then. I haven't looked at them so I'm not sure what -- so you don't object to A, which is the contract.

MR. REGAN: And U, which is the note.

THE COURT: U is the note.

MR. REGAN: And KK.

THE COURT: And KK.

MR. REGAN: That was just a series of -- it's information from PayPal concerning the charge-back.

THE COURT: Okay. All right. So what we're going to have to do is that as we -- as exhibits go in we're going to call them by the numbers that -- the letters that are indicated in the book. We -- you know, once in a great while people appeal me. Okay. And you might appeal me or Mr. Regan might appeal me and I welcome that. It's fine. But I need to have a record that's understandable to the judges that have to look at what I've done here, the rulings that I've made, et cetera. So we need to refer to these exhibits by their exhibit numbers and letters here so that all the way through if it goes up and somebody says Exhibit KK, you know, the email from Mr. Anketell dated whatever, that whenever they say KK -- whenever they mention that exhibit they mention its -- its letter as well.

MR. SMITH: Right.

THE COURT: So that the Appellate Court can understand what happened. And, frankly, so that when we come back and look at the record we can understand what happened. Okay. So we have three things that are not objected to. We have a host of other things that are objected to. We'll deal with those one at a time. We have the -- and I've only now talked about the non-dischargeability case. I also have the -- the stay violation case, which I have put on for trial today. Are you proceeding with that?

MR. REGAN: Yes, Your Honor.

THE COURT: You are? Okay.

MR. REGAN: Yeah.

THE COURT: All right. Now -- so in that you're plaintiff -- give me an idea of what your evidence -- how you intend to prove that and what you're going to need to do to prove it. How --

MR. REGAN: The evidence we have basically, Your Honor, is transaction records from PayPal indicating a movement of funds out of Mr. Anketell's -- or actually Ground Up's account at the behest of Mr. Smith and Ms. DiPiro. That transfer occurred after the stay was in effect. It appears from the record that it occurred on either the 13th or the 29th of April where the petitions were filed on the 8th.

THE COURT: Right. So the upshot of that -- of that is that the Anketells informed PayPal to reverse a payment. Is that right?

MR. REGAN: One -- as I understand it the Smiths --

THE COURT: The Smiths, I meant to say.

MR. REGAN: -- registered a complaint with their own credit card company --

THE COURT: Right.

MR. REGAN: -- at whatever time and the transfer occurred again the 13th or the 29th following the -- following the stay.

THE COURT: And what's the evidence going to be as to when they, the Smiths, informed their credit card company that they had a problem with this payment?

MR. REGAN: My understanding if -- first, we have -- they have offered in discovery records suggesting communications between themselves and their credit card company in a -- prior to that date, prior to the stay.

THE COURT: Prior to the filing?

MR. REGAN: Prior to the stay. I'm objecting to those exhibits largely because they're not properly certified and we know no more than the Smith and DiPiro's word for when the communication occurred, so I'm trying the case on that. I'm not going to mislead the Court about what the evidence is. You, of course, will determine its weight, but I'm presenting the fact that (1) transferred occurred after the stay; and (2) it's the Smiths' testimony that would say when they did it and I don't -- and you will judge the credibility of that, Your Honor.

THE COURT: Well, okay. So the facts that you expect to adduce are that -- are what? What do you --

MR. REGAN: That I expect --

THE COURT: What do you think supports that claim?

MR. REGAN: The fact that PayPal moved the money after the -- after the transfer -- I mean, sorry, after the stay went into effect as to when contact was made and when Mr. Smith was aware of the bankruptcy. He's got the documents he's indicated which I am going to object to.

THE COURT: All right.

MR. REGAN: So I'm -- I'm simply introducing the date of the transfer itself.

THE COURT: I see. Okay.

MR. REGAN: Post -- post-stay.

THE COURT: All right. All right. So your story here is that they communicated with PayPal or their credit card company after the stay went into effect?

MR. REGAN: That is the allegation of the complaint, Your Honor. Yes.

THE COURT: All right. And how are you going to prove that? What evidence do you have that they did that?

MR. REGAN: I don't have direct evidence, other than what their testimony will be and I expect their testimony will be that they did so prior to learning of the bankruptcy.

THE COURT: So then you have no evidence that they did it after the bank --

MR. REGAN: I don't have affirmative evidence as to the date of their communication, no, Your Honor.

THE COURT: So how are you going to prove that? Do you -- do you concede that under 362(k) that it would be necessary for them to have taken action after the stay went into place in order for them to be liable under 362(k)?

MR. REGAN: I do, Your Honor. I do, Your Honor.

THE COURT: But you have no evidence of that.

MR. REGAN: I agree with that. That's true. I'm un -- I'm dotting the I's and crossing the T's on a claim there's a -- it was alleged before I got into this case. I'm going to simply present to the Court the evidence that we have upon which that complaint was based. Given your comments, and I don't have a serious dispute with your comments, I don't know if I -- if --

THE COURT: All right.

MR. REGAN: If you will end up being persuaded, Your Honor.

THE COURT: Fair enough. All right. Hold on.

(Pause)

Okay. We'll -- we'll proceed to that -- with that claim as well and I'm going to try these cases together. This doesn't add -- the only evidence that you'll need, it sounds like, or offer are -- is the document that has now already gone in, right -- that they've agreed to let in, which is the PayPal invoice or communication, Exhibit --

MR. REGAN: That is the only evidence on that ground that I'm offering, Your Honor, yes.

THE COURT: Other than questioning to them?

MR. REGAN: Yes, Your Honor.

THE COURT: All right. Fine. So you might be -- okay. All right. I'll -- we'll take that from -- we'll take that from there. Okay. I think we're all set then. Let's start again.

MR. SMITH: So I should say before I begin I was going to show documents so I don't know that I could show these pictures if they're disputed in evidence, Your Honor.

THE COURT: You -- you can --

MR. SMITH: Okay.

THE COURT: -- but they're -- you should understand that, you know, you have a good-faith basis that you're going to put them in evidence.

MR. SMITH: Okay.

THE COURT: They're not in evidence --

MR. SMITH: Right.

THE COURT: -- just because you talk about them and show them to me in the course of your opening.

PLAINTIFFS' OPENING STATEMENT

MR. SMITH: Thank you. I understand. Okay. So I'll throw this down first just for a visual. That's -- this is the state of our house --

THE COURT: Right.

MR. SMITH: -- after the project stopped more or less and Ground Up walked off the project. But just to start I would say that my wife and I, Theresa, entered into what we thought was a routine home improvement contract and -- but now we've been through one of these before we understand there's no such thing as a routine home improvement issue, I think. But what followed I think what we're going to show is the execution of a well-laid plan by the defense to acquire funds quickly due to a complete lack of solvency and to use these funds for other purposes other than our project. And we're going to show that they were used or obtained from numerous misrepresentations and how future funds were also obtained through additional misrepresentations. And our witnesses are all individuals who worked on our project; will recount I think how they were led to believe this was a legitimate project, especially Chris LeBlanc, I believe, will recount how they were expected to be paid what they were owed and how they suffered injuries as well as we did. So it was kind of a pervasive issue that affected all of us here. And I think the big issue we're going to try to show is the misrepresentations and the misuse of funds issue, which works into malicious injury. So obviously we don't want to be here. We're here because of this -- of what happened to us and hopefully we can move on after today to some degree. That's all I have to say.

THE COURT: Okay.

MR. SMITH: And this -- as far as the picture goes I can just point out some of the more glaring things, I believe.

THE COURT: Spin that around a little bit. If you want the words to be on top.

MR. SMITH: Yeah. I'm not sure they're going to be legible.

THE COURT: It's kind of counter-intuitive. That's counter-intuitive. They went backwards. So keep going.

MR. SMITH: Yeah.

THE COURT: Keep going. Keep going, Mary. There we go. Oh --

MR. SMITH: Okay.

THE COURT: -- no, no, back one. There you go. Assuming the words are supposed to be right-side up.

MR. SMITH: Right. Right. So, I mean, well, that's -- also I can use that to zoom in.

THE COURT: That's fine. All right.

MR. SMITH: So these are just the -- some pictures. We have -- we took quite a few pictures. Some we just took as the project was evolving just to document it because it was interesting but -- but, you know, after the project stopped we took care to take pictures of the state it was left in. And I think the glaring -- the most glaring picture is -- and I'm not sure I can identify this. This is I believe the carbon -- this is a hole, the square, a long hole. It's a carbon dioxide vent that basically went right to our water heater and it expelled carbon dioxide into our attic we were to find out. And that's how it was left.

MR. REGAN: Your Honor, I would object insofar as at this point this is testimony and evidence as opposed to an opening statement-type of presentation.

MR. SMITH: That's fine.

THE COURT: I agree.

MR. SMITH: Yeah.

THE COURT: All right. I'll give you a chance to show these to me later and properly authenticate them and subject to an objection.

All right. Mr. Regan.

DEFENDANT'S OPENING STATEMENT

MR. REGAN: Yes, Your Honor. Very briefly.

I don't want to be redundant with the summary judgment materials but there's a great deal of disagreement that's already been agreed between the parties in this case. In August Ground Up Construction made a proposal to dismiss. October 13th they signed the agreement. October 17th the first payment and the rest of the payments ensued. All of the payments, every dime that the Smiths paid to Ground Up was pursuant to and furtherance of the contract. There's a variety of alleged misrepresentations that are listed in the summary judgment materials. They're listed in the complaint. We'll be arguing that none of those are actionable other than anything that may have been pro -- may be proven as a misrepresentation prior to the contract. These are payments that appeared after the contract are contraction payments, not adduced by any subsequent misrepresentation. They have to show that the contract was void or voidable from the beginning.

The history of this case comes down to a very narrow point at the end of March. In February Mr. Anketell asks for and receives partial payment for what was due on the beginning of demolition. The due payment was $27,000 and change. The payment was $14,000. Over the next month further partial payments were made on what was due at that time. The job progressed to the point that at the time that it -- at the time that things blew up on May -- April 3rd of 2015, the roof was on plywood, the walls were up sheathed, no shingles on the roof, no siding on the walls.

At that point Mr. Ankertell's financial condition had deteriorated and it deteriorated suddenly to the point where he couldn't carry on. He advised the Smiths of that problem. You'll hear about this in I think testimony from both sides. There was a fairly interesting meeting at their home on the 3rd. Mr. Smith accused, "You're a thief, you're terrible, you took our money" and he was told to leave -- leave the job and he did so.

I'd just ask you to focus your attention, first of all, on the payments and very carefully on any evidence of conversations prior to the contract because I respectfully submit that's where the lynchpin will be here.

THE COURT: I will listen.

MR. REGAN: Thank you, Your Honor.

THE COURT: I do have one more preliminary matter to take up with the Smiths and with Mr. Anketell and that is in your complaint you demanded a jury trial here. My first question is, do you still demand a jury trial?

MS. DIPIRO: No.

MR. SMITH: We don't.

MS. DIPIRO: Yeah.

THE COURT: All right. So you're waiving your right to a jury?

MR. SMITH: We --

THE COURT: Is that correct?

MS. DIPIRO: Yes.

MR. SMITH: That's correct.

THE COURT: All right. If you have a right to a jury, which I'm not sure you do with what's left in this complaint. All right.

And is that acceptable to you, Mr. Regan?

MR. REGAN: It is, Your Honor.

THE COURT: No jury?

MR. REGAN: Yes.

THE COURT: Okay. All right. So we're all set. We'll keep going then. Why don't you go ahead and call your first witness.

MS. DIPIRO: We're going to call -- we're going to call Damian Anketell to the stand.

THE COURT: Okay. You want to start with Mr. Anketell.

Come on up.

MR. ANKETELL: Where do I stand, sir?

THE COURT: Just come right up here.

DAMIAN ANKETELL, SWORN

THE COURT: All right. Good morning, Mr. Anketell.

THE WITNESS: Good morning, sir.

THE COURT: All the witnesses that are here can listen to this carefully and we won't have to go through it again and again and again, and that is we record in this courtroom. What Liz is doing is quality control with respect to the recording and it gets shipped off to who knows where, somewhere in the United States, and they make a transcript of it, but it isn't being made into a transcript here today. So if we can't hear you on that -- on that microphone, if you don't hear it as you hear it when I speak now and you can hear that it's being amplified, if we don't hear it amplified we're not getting you and that will be a real problem for the Appeals Court, even if I hear you. All right.

So what I'm telling everyone, including those that are the Smiths' speak into the microphone. Be very aware of that. That sounds easy. It turns out not to be. All right. You need to be very conscious of that. You can pull at the witness box -- you -- go ahead and grab that thing. Pull it up, down, towards you.

THE WITNESS: Yes, sir.

THE COURT: You can get it right to you -- where you want it to be.

THE WITNESS: Yes, sir.

THE COURT: If you want to look at Ms. DiPiro when she's asking questions just move it -- move it and talk to it that way -- into it that way. Okay?

THE WITNESS: I will. Yes, sir.

THE COURT: All right. I'll remind everybody as we go, but it's an ongoing challenge around here. Okay. So let's get started.

MS. DIPIRO: Thank you.

DIRECT EXAMINATION

BY MS. DIPIRO:

Q. Mr. Anketell, do you recall telling me and my husband prior to signing the contract on 10/13 that you had completed two and a million in home improvement contract -- projects in the past year?

A. I do not recall that.

Q. Do you recall telling me and my husband that you had seven to eight jobs lined up in the near future?

A. I do not recall.

Q. Did you tell me and my husband that all your contractors and subcontractors require background checks on them?

A. I do not recall that conversation.

MS. DIPIRO: And I wanted to bring in an exhibit for the next question. Should -- how should I do that, Your Honor?

THE COURT: Well --

MS. DIPIRO: Should I just reference it -- reference it?

THE COURT: Well, no. You're going to have to -- first of all, does he have a book in front of him?

MS. DIPIRO: I have five of them. Yeah, it's right there.

THE COURT: Okay. So now you'll just refer him to the --

MS. DIPIRO: Exhibit.

THE COURT: -- document.

MS. DIPIRO: Okay.

BY MS. DIPIRO:

Q. Could you refer to Exhibit E in that book, please?

MS. DIPIRO: And I could put it on a teleprompter if that's easier.

THE COURT: No. I mean, I have a copy, my clerks have a copy, Mr. Regan has a copy.

MR. REGAN: I don't -- I don't have the book, Your Honor.

THE COURT: Oh, could you give him a book? Do you have another one?

MR. REGAN: May I?

THE COURT: Okay.

BY MS. DIPIRO:

Q. And I'm looking at page 3 of 4.

A. I'm -- which exhibit are you, please?

Q. We're on Exhibit E, page 3 of 4.

A. Exhibit E.

MS. DIPIRO: Would you like me to help him find it or --

THE COURT: No.

MS. DIPIRO: It's labeled.

THE COURT: He'll find it.

THE WITNESS: I don't have any tabs, Your Honor.

THE COURT: Oh, you don't. Okay. That's too bad. Can you find E? Are they marked?

MS. DIPIRO: I wrote on the top of each page what the exhibits are.

THE COURT: Yeah. Can you get to it?

THE WITNESS: I -- I have -- I don't have any indication --

THE COURT: All right.

THE WITNESS: -- what exhibit it is.

THE COURT: Here you go.

THE WITNESS: Just the page number.

THE COURT: Mary, give him this one. I don't want to go through this all day. I'll switch with him. I'll find it.

MS. DIPIRO: They're in alphabetical order.

THE COURT: I know, but it's going to be easier for me to find than him.

MS. DIPIRO: With tabs, yeah, probably.

THE COURT: Thank you.

BY MS. DIPIRO:

Q. Okay. Do you -- did you get to the page, Exhibit E, page 3 of 4?

A. I have.

Q. Okay. Could you -- do you recognize this email address from -- on the -- actually, page 2 or 4?

A. I'm sorry, can you repeat that question, please?

Q. If you look at page 2 of 4 there's -- the email is to me, Theresa DiPiro, that's my email address. And do you recognize the email address it's from on the bat -- bottom of page 2 of 4?

A. I don't have any 204 here.

Q. 2 of --

THE COURT: 2 of 4.

MS. DIPIRO: -- 4.

THE WITNESS: Oh, I'm sorry.

THE COURT: It's marked on the top.

BY MS. DIPIRO:

Q. And the date -- the date is October 23, 2014.

A. I don't have that on this paper.

Q. Exhibit E, page 2 of 4?

MS. DIPIRO: I could put it up there. Would that be easier?

THE COURT: No. I want to make sure that I --

Mary, get me the book. Let's just get this nipped in the bud here if it's a problem.

No, don't talk to her. It's okay.

THE WITNESS: Sorry, Your Honor.

THE COURT: I -- I -- so I'm looking at the exhibit.

THE WITNESS: Yes, sir.

THE COURT: It's Exhibit E. It's referring to 2 of 4. Do you see that, right?

THE WITNESS: Yeah. Yes, I do.

THE COURT: All right. And then -- okay, I want to say, counsel, she's asking you about an email dated

October 23rd at the bottom of the page. Is that what you don't see?

THE WITNESS: I believe she said 24th.

MS. DIPIRO: October 23rd.

THE COURT: All right. Do you have trouble hearing?

THE WITNESS: No, sir.

THE COURT: You don't?

THE WITNESS: No.

THE COURT: Okay. Because I heard her say October 23rd.

THE WITNESS: I'm sorry. I'm just a little nervous.

THE COURT: All right. Well, get calm and let's proceed.

THE WITNESS: I do see that, Your Honor.

BY MS. DIPIRO:

Q. Do you recognize the email address that that email was from?

A. I do.

Q. Is it your email address?

A. It is Ground Up Construction's email address.

Q. Thank you. And what is your capacity at Ground Up Construction?

A. What is my what?

Q. What is your capacity at Ground Up Construction?

A. I am the owner/operator.

Q. Thank you. If you look at the next page could you read the last sentence? That's page 3 of 4, the last sentence of the first paragraph, and I could read it for you. It says, "If you had -- have tradesmen you want to plug into the job let me know. If it makes you more comfortable I have no problem using your guys. I will need to know how you want to use" -- I think he meant to write who -- "so I can do some background on them." Do you -- do you see that?

A. I do.

Q. What were you referring to when you said "background"?

A. I do license checks, check to see the reputation of the company. And then I'd also, depending on the size of the company, do searches on sex offender registries.

Q. Which -- would you consider that a background check?

A. Yes.

Q. Thank you. Did you receive the -- our initial deposit of $38,952 on Friday, October 17th?

THE COURT: All right. I'm just going to stop you there --

MS. DIPIRO: Okay.

THE COURT: -- for a moment because I have to keep the record as clean as I can.

MS. DIPIRO: Okay.

THE COURT: Exhibit E.

MS. DIPIRO: Yes.

THE COURT: Are you -- in order for that to come in evidence --

MS. DIPIRO: Yes.

THE COURT: -- then you're now going to have to say, you know, "I move the introduction of Exhibit E."

MS. DIPIRO: Okay.

THE COURT: All right. So do you say that?

MS. DIPIRO: Yes. I move the introduction --

THE COURT: All right. Is there an objection?

MR. REGAN: Object, Your Honor. I think this is legitimate to use -- to refresh a memory, but with the witnesses here I don't think it's appropriate for it to come in as a stand-alone document.

THE COURT: And that would be why?

MR. REGAN: Best evidence rule, the testimony is here.

THE COURT: Best evidence. That's overruled. So I'll admit E as the -- as an exhibit in the case.

Plaintiff's Exhibit #E Admitted into Evidence

MS. DIPIRO: Thank you, Your Honor.

THE COURT: Okay.

MS. DIPIRO: And Exhibit B, which I am going to reference is a statement.

THE COURT: I'm sorry, what did you just say?

MS. DIPIRO: I'm refer -- referencing Exhibit B in the next --

THE COURT: Exhibit B?

MS. DIPIRO: B, yes.

THE COURT: All right. You want him to turn to it?

MS. DIPIRO: Yes. If you could please turn to Exhibit B on page 2 of 53. It's a Santander Bank account. I'd like to admit this into evidence as well.

THE COURT: Well --

MS. DIPIRO: Do I have to ask a question first?

THE COURT: See, you -- well, all right.

First of all, what's your objection?

MR. REGAN: Relevance for one; not certified for another, Your Honor.

THE COURT: All right. Let's do this. You need to -- we call it lay a foundation, right?

MS. DIPIRO: Yep.

THE COURT: So you need to show me --

MS. DIPIRO: Got you.

THE COURT: -- why it is that this is relevant, what is it --

MS. DIPIRO: Got you.

THE COURT: -- and so you need to ask him a few questions about it.

MS. DIPIRO: Of course.

THE COURT: Has he seen it before? What is it? Whatever you want to ask him, so yes.

MR. REGAN: For simplicity's sake let's stipulate that that payment was received on or about that date.

THE COURT: That's fine. I mean, I'm sure she'll accept that stipulation.

MR. REGAN: Sure.

THE COURT: It doesn't mean that she doesn't want this exhibit in. So --

MR. REGAN: I understand.

THE COURT: -- I don't know what she's -- it's up to you.

MS. DIPIRO: Yes.

THE COURT: Do you understand what counsel just said?

MS. DIPIRO: Yes.

THE COURT: All right. So we have a stipulation now that -- that how much?

MS. DIPIRO: $38,952.

THE COURT: That you -- that you folks paid $38,900 --

MS. DIPIRO: And $52.

THE COURT: $52 to Mr. Anketell on what date?

MS. DIPIRO: On October 17, 2014.

THE COURT: Okay. That's stipulated, all right? That means that's a -- that's -- I'm -- I'm -- I will make a finding that that happened now.

MS. DIPIRO: Okay.

THE COURT: Okay. That's proven.

MS. DIPIRO: Okay.

THE COURT: Do you still need this ex -- this document in?

MS. DIPIRO: Yes, I will for this explanation and others.

THE COURT: Okay. Then you can go ahead and do your best.

MS. DIPIRO: Okay.

BY MS. DIPIRO:

Q. Do you recall on October 25th that my husband had a conversation with your then-framer Kenny Lefrenswa (phonetic) that he was concerned about your whereabouts?

MR. REGAN: Objection, Your Honor.

THE COURT: No, do not interrupt her.

MR. REGAN: She had --

THE COURT: Let her finish her question and then I'll deal with objections. You can stand so that I know that you're going to object, but --

MR. REGAN: I'll wait until she's done, Your Honor. Thank you.

THE COURT: That would be the right way to do it.

But go ahead.

BY MS. DIPIRO:

Q. Did you have a conversation with my husband, Timothy Smith, regarding not hearing from you after our initial deposit? My husband contacted your framer, Ken -- Kenny Lefrenswa. Do you remem -- recall that conversation?

THE COURT: Basis?

MR. REGAN: Calls for hearsay, Your Honor.

THE COURT: Okay. So the problem that we have with that question is, first of all, it's two questions.

MR. REGAN: Yep.

THE COURT: And did you -- "Do you recall a conversation with my husband, yes or no?" "Yes, I do." "Do you recall that my husband said X to you?" That's not hearsay under Federal Rules.

MS. DIPIRO: Yeah.

THE COURT: That's not. "What did Mister -- the framer say," that might be hearsay. So break up your questions.

MS. DIPIRO: Got you.

THE COURT: So right now I'm going to sustain on the basis that it's compound. It's too many questions. I don't -- there are different parts to it. All right. So ask little, simple questions.

MS. DIPIRO: Thank you, Your Honor.

THE COURT: All right. Go ahead.

BY MS. DIPIRO:

Q. Do you recall having a conversation with my husband regarding that hearing from you after the first deposit?

A. I -- I do not.

Q. Do you -- do you remember having some sort of surgery right after we gave you the first deposit?

MR. REGAN: Objection, Your Honor. Relevance.

THE COURT: Overruled.

Go ahead. No, he didn't an -- is that your question --

MS. DIPIRO: Yes.

THE COURT: -- "Do you remember having surgery?"

THE WITNESS: It was prior to their deposit.

BY MS. DIPIRO:

Q. It was prior. Did you have a -- did my husband -- do you recall a conversation with my husband regarding not having -- not being in a contract -- being in a contract together? Like --

A. I'm sorry, can you --

Q. Like confirming that you're in a contract together?

A. I don't recall that conversation, no.

Q. Do -- I'd like to show you another exhibit, which is Exhibit E again, and I'm going to give you the page number. If you look at page 1 of 4, Exhibit E, could you read the "from" email, the -- who the email was written to up top? It's rlehchris@aol.com (phonetic). And who it -- the first, it says "Hi, Tim." Is that what you see in front of you?

A. I do.

Q. Do you -- do you recognize that as your email as who it's from on the top?

A. I do. Yes.

Q. I'm just going to read to you the first sentence of the last paragraph: "We are in a contract together. My company has done nothing to violate the conditions." Do you recall writing that?

A. I don't recall writing it, no.

Q. Okay. Thank you.

MS. DIPIRO: I'd like to -- I think Exhibit E is already in there, so --

MR. REGAN: Objection. I think we'll -- we've moved Exhibit E, page 2 of 4 in; 1 of 4 has not been addressed yet. I would have the same objection.

THE COURT: Which is what?

MR. REGAN: I don't -- given the test -- direct testimony I don't see a need for a document and I would therefore object to it.

THE COURT: I don't know of any Federal Rule that says -- what -- what -- talk to me the law.

MR. REGAN: Sure.

THE COURT: Evidence. You don't see a need because of the doc -- that he need a document. That's not your call.

MR. REGAN: I'll with --

THE COURT: So the question is why is it objectionable?

MR. REGAN: I'll withdraw the objection, Your Honor.

THE COURT: All right. It's withdrawn. All right.

So this is admitted and I -- do you want to offer all of the -- the whole thing, right?

MS. DIPIRO: Yes.

THE COURT: All right. Is there an -- Mr. Regan, is there any objection you have to the rest of E? Take a look at it.

MR. REGAN: I would -- assuming that Mr. Anketell recognizes each of them as a message he sent.

THE COURT: These are statements of your client.

MR. REGAN: I understand. No. I don't have an objection to the extent that he has identified them and I agreed that they are his communication.

THE COURT: Okay. Mr. Anketell. Mr. Anketell, are these emails that you sent to these plaintiffs and that they responded to?

MR. SMITH: If you can just look at them.

THE COURT: He can look at them.

THE WITNESS: I believe they are. Yes, sir.

THE COURT: Does that mean yes?

THE WITNESS: Oh, yes, sir. They are.

THE COURT: All right. They're admitted.

Plaintiff's Exhibit #E Admitted into Evidence

They're admitted as admissions, all right, and they're not hearsay under Federal Rule of Evidence 801.

BY MS. DIPIRO:

Q. Do you -- do you remember the checks that you made to David Jaquith and how much the total payment -- the checks you made to David Jaquith?

A. I do not.

Q. Do you realize that one of the checks was made from your Castle Hill account?

A. I do not -- I did not know it.

MS. DIPIRO: I would like to introduce the checks written to David Jaquith.

THE COURT: Is that pre-marked as an exhibit?

MS. DIPIRO: Yes, it is.

THE COURT: Which number or letter?

MS. DIPIRO: That's Exhibit H.

THE COURT: All right. Let's get a look at it. Did you say -- what do you want to do with this? You're offering it in evidence?

MS. DIPIRO: We're offering it into evidence.

THE COURT: So you need to -- so counsel is standing and he should be. I mean, I don't know if he should be but he is, so here's the question you might want to ask. When you show this witness an exhibit the first thing you want to do is just say, "Let's go to Exhibit H. What's that?"

MS. DIPIRO: Yeah. Okay. Good idea.

THE COURT: That's all. And have him tell us what it is. And then we'll fig -- then we'll know what it is we're dealing with. I don't --

MS. DIPIRO: Right.

THE COURT: Right now it's -- you can't offer it until you lay some foundation so -- and all that -- that's legal language that just means so that the Court understands what it is we're looking at. And this witness, if he says, "I have no idea what this is, I've never seen it before" that's one thing; if he says, "This is my emails back and forth with you" that's a whole other thing. So go ahead and get him to go to H and we'll ask him.

MS. DIPIRO: Okay. Great.

BY MS. DIPIRO:

Q. Could you please turn to Exhibit H?

A. I'm there.

Q. Could you tell me what you -- what these checks are for?

THE COURT: Well, ask him what it is.

BY MS. DIPIRO:

Q. What are these -- what is it, Exhibit H?

A. Exhibit H looks like two checks that were paid to David Jaquith.

Q. Could you tell me what the total of the two checks -- just about?

A. $2,312.80.

Q. Thank you.

THE COURT: Are you offering these exhibits?

MS. DIPIRO: I'm offering these exhibits.

THE COURT: Objection?

MR. REGAN: Relevance.

THE COURT: Relevance?

MR. REGAN: Relevance.

THE COURT: Why is this -- what is -- why do you want him to -- why do you want this in evidence? What's your reason for that? What are you trying to prove with this?

MS. DIPIRO: Why -- what am I trying to prove?

THE COURT: Yeah. What are you trying to prove with it?

MS. DIPIRO: That he was paying -- paying checks to his contractors out of both Ground Up and Castle Hill.

THE COURT: And why is that going to be relevant?

MS. DIPIRO: It appears that he might not have had liquidity in either and Ground Up after we gave him a large deposit.

THE COURT: All right. So that -- that objection is overruled. I'll admit Exhibit H, which is -- consists of two checks written on the account of Ground Up Construction, part one, and the second check is written on the account of Castle Hill Properties. Both appear to be signed by Mr. Anketell. Okay.

Plaintiff's Exhibit #H Admitted into Evidence

Okay. They're in evidence. Go ahead.

MS. DIPIRO: Thank you.

BY MS. DIPIRO:

Q. Do you recall how much you paid Chris LeBlanc for his services?

A. I do not.

Q. Could we -- could you please turn to Exhibit F?

THE COURT: Can -- are you all right? Sorry.

THE WITNESS: Yeah.

THE COURT: Okay. Let -- yeah. All right. You -- while you're re-sorting yourself to Exhibit F.

MS. DIPIRO: Um-hum.

THE COURT: All right. So you find Exhibit F. I'm going to take a -- about a three-minute recess.

MS. DIPIRO: Okay. Thank you.

THE COURT: Okay. We'll sit in recess for a moment.

MS. DIPIRO: Okay.

THE COURT: Thank you.

MS. DIPIRO: Thank you.

(Off the record at 10:33:29 a.m.)

*** * * * * * * ***

(On the record at 10:40:17 a.m.)

THE COURT: You may be seated.

All right. You were directing the witness to Exhibit F.

MS. DIPIRO: Yes, I was.

THE COURT: All right.

BY MS. DIPIRO:

Q. If you could please turn to F.

A. I am there.

Q. This is an affidavit of Christopher LeBlanc and if you read the second paragraph from the bottom, could you read what is written there? "I was paid ...."

MR. REGAN: Objection, Your Honor.

THE COURT: Yeah. So basis?

MR. REGAN: Basis is this is on cross-examina -- a cross-examined statement made out of court. I think it's got a hearsay problem. In any event, Mr. LeBlanc is here to testify.

THE COURT: Right. All right. So this -- this is hearsay.

MS. DIPIRO: Hearsay. Okay. Got you.

THE COURT: Because Mr. LeBlanc is -- is not a party and these are out-of-court statements even though he signed his name to it, et cetera, you know. I --

MS. DIPIRO: Yes.

THE COURT: I don't know of any exception but I would need you to identify one if there was one.

MS. DIPIRO: To reference it. Because he'll be on -- he'll be on the stand to --

THE COURT: All right.

MS. DIPIRO: Okay. Hold onto that one. Okay.

THE COURT: Right. You know, I don't want to mislead you because I don't want you to be confused, okay. I -- I'm going to tell you right now, all right, that under the Federal Rules of Evidence I am -- I will -- I'm going to declare or find that Mr. Anketell is a hostile witness to you, a hostile -- not that he's angry but under the rules "hostile" means that he's the other side, so he's going to fight you every step of the way, you know. I mean, it's -- it's what we recognize in trial practice, you know, as the "other side." He's not your witness so you can ask him leading questions. You're allowed to do that.

Now, you're also able then to -- if you wanted to you could ask him what this thing says but not offer it in evidence.

MS. DIPIRO: Okay.

THE COURT: And ask him if he agrees with it.

MS. DIPIRO: Oh, okay. Got you.

THE COURT: You can do that.

MS. DIPIRO: Okay.

THE COURT: All right. "So this is what it says. Is that what happened?"

MS. DIPIRO: Excellent.

THE COURT: You're allowed to do that. I don't want to mislead you --

MS. DIPIRO: Yes.

THE COURT: -- into thinking that you can't touch this thing. You just can't offer it in evidence. It's not coming in.

MS. DIPIRO: Got you.

THE COURT: Okay.

MS. DIPIRO: Thank you, Your Honor.

BY MS. DIPIRO:

Q. It reads -- the second paragraph to the bottom reads:

"I was paid a total of $2,000 from Damian Anketell of Ground Up Construction to -- for the work I performed on the Smiths' dormer project."

Do you agree with that statement?

A. I do not agree with that statement.

Q. Thank you. On the second page of Exhibit F it says -- in reference to Nate Nally (phonetic) and Steve Zervotis (phonetic), it says, "I supervised" --

THE COURT: Where are you on the doc -- it's a big document but a lot of words.

MS. DIPIRO: Oh, this, the bottom -- the last paragraph of page 1. I have the --

BY MS. DIPIRO:

Q. It says, "I supervised and initiated all the work performed by Nate Nally and Steven Zervotis." Do you agree with that statement?

MR. REGAN: Objection. Your Honor, the form of the question is effectively introducing the contents into evidence so I go back to my original objection.

THE COURT: All right. That -- that's overruled.

MR. REGAN: Thank you, Your Honor.

THE COURT: Go ahead.

MS. DIPIRO: Thank you, Your Honor.

BY MS. DIPIRO:

Q. On page 2 of Exhibit F --

THE COURT: But he didn't answer that question I don't believe.

MS. DIPIRO: Oh, I'm sorry. That's -- you're right.

BY MS. DIPIRO:

Q. Do you -- do you agree with that statement that Chris LeBlanc perfor -- he supervised and initiated all the work performed by Nate Nally and Steve Zervotis?

A. Yes.

Q. Thank you. If you flip the page to Exhibit F, page 2 of 3, the first full sentence says:

"They were paid zero dollars from Ground Up Construction/Damien Anketell for the said -- for said project. I paid them."

Do you agree with that statement?

A. I do not.

MR. REGAN: Objection, Your Honor. Relevance.

THE COURT: Overruled. Go ahead.

THE WITNESS: I do not.

BY MR. DIPIRO:

Q. He further states, "I paid them $3,150 out of my personal funds after Damian terminated the con -- the project on 4/3/15." Do you believe it -- do you agree with that statement?

A. I do not agree with that statement.

Q. Thank you. Could you please turn to Exhibit K? This is a affidavit of Paul Lance. If you look on the first page, that's 1 of 2, it reads:

"The initial cost of the entire project was $21,000. However, because the project remains incomplete only $19,000 of the work was completed."

Do you agree with that statement?

A. I'm sorry. Are we looking at Exhibit K?

Q. It's Exhibit K and it's three paragraphs from the bottom. It's first page 1 of 2.

A. They were backwards. I'm sorry. Yes, I'd agree with that.

Q. The next sentence is:

"Framing and rough construction were not complete when I left the Smiths' job on March 31, 2015."

Do you agree with that statement?

A. I disagree with that statement.

Q. Thank you. If you could flip the page to 2 of 2, the second paragraph down. It says:

"After being presented with a $7,000 check dated 3/18 that was returned for insufficient funds we were only paid $12,000 by the way of a bank check and the rest in cash for the work he completed."

Do you agree with that statement?

A. I agree with that statement.

Q. You do agree with that? Thank you.

"The outstanding balance for the job of the work completed is $9,000 plus associated fees."

Do you agree with that statement?

A. I'm not sure exactly what the contract states but that seems pretty reasonable to me, yes.

Q. Thank you, Mr. Anketell. If we could turn to Exhibit I; this is the affidavit of David Jaquith. If you look one, two, three, four -- five paragraphs down it says:

"I was paid $2,312.80 for my architectural plans and expenses. I was $1,000 by check as initial deposit and

$1,312.80 by check for final payment."
Do you agree with that statement?

A. What -- which paragraph are you looking at?

Q. It's on the third from the bottom.

A. Yes, I agree with it.

Q. Great. He also said, "None of the payments to me were in the form of cash." Do you agree with that statement?

A. I agree with that.

Q. Thank you. Could we please turn to Exhibit J? Exhibit J is what was presented to us by -- by Damian Anketell's counsel. Do you recognize what this spreadsheet is, Damian -- Mr. Anketell?

A. I do.

Q. Thank you. Could you tell me --

THE COURT: Objection?

MS. DIPIRO: Oh, I'm sorry.

MR. REGAN: Objec -- I object to the reference to the matter, Your Honor. This is a -- this is a counsel work product. It's not signed by Damian. This was in an effort to work out -- I just don't see it's relevance as a genuine document.

THE COURT: Well --

MR. REGAN: It could be admitted.

MR. SMITH: Admit it.

MS. DIPIRO: I'd like to admit --

MR. SMITH: Shh.

MS. DIPIRO: Oh, sorry.

THE COURT: Wait a minute. So your objection is, well, it's work product. I'll overrule. It's been waived. If she has it and it's your work product, it means you gave it to her.

MR. REGAN: We did, Your Honor.

THE COURT: It's waived. All right.

MR. REGAN: Very well, Your Honor.

THE COURT: All right. So it's not work product and she hasn't offered it in evidence yet. Let's see what she's going to do. I don't know what she's going to do with it.

MR. REGAN: Okay.

MS. DIPIRO: I would like to offer this into evidence, Your Honor.

THE COURT: All right. Well, there she goes. Now she did offer it in evidence. So the question of the moment is, do you object to the admission of this document and, if so, why.

MR. REGAN: I don't see relevance to it, Your Honor, and I think this gets to a bigger question on the entire thrust of the plaintiffs' case, which is the relevance of how funds were moved between and among Mr. Anketell and various entities. There is no foundation to the effect that there's any representations made or any reliance upon anything having to do with how the funds went back and forth.

THE COURT: All right.

MR. REGAN: Further, there's another point insofar as she raised the question of I'm -- I -- this is relevant because I think some of our money went from here to there instead of staying on our project. There's a lack of foundation for that being relevant as well because there never was a request nor an agreement to isolate funds. We will stipulate the payments went into Ground Up's general fund and was used for purposes other than this one project over the life of the project. So that is not a question that's in dispute, Your Honor, but as to whether or not it's relevant to any claim I would suggest that it's not.

THE COURT: All right. Okay. Thank you. I'm going to sustain the objection at this point without -- on the grounds of relevance without prejudice to you asking him more questions about what this is because I can't assess whether it's relevant until I know what it is.

MS. DIPIRO: Yes, Your Honor. Understand. Thank you.

THE COURT: So go ahead and ask him what --

BY MS. DIPIRO:

Q. Mr. Anketell, what does -- when was this document presented to me and my husband?

A. I don't know the date.

Q. What does this document represent?

A. This is a worksheet that my counsel and I worked together that represents the expenditures of Ground Up Construction in this -- in the dated time frames.

Q. Do you have receipts to back up this -- this document?

A. I do partially.

Q. Why aren't they in evidence?

MR. REGAN: Pardon? What was the question, please?

MS. DIPIRO: Why aren't the receipts part of your evidence?

MR. REGAN: I object to that, Your Honor. She's asking why we're not offering them in evidence.

THE COURT: Yeah. So I'm going to -- you're not -- you're not asking him questions, first of all. You don't ask Mr. Regan questions.

MS. DIPIRO: Thank you.

THE COURT: You ask this fellow questions. The problem with your question is that in order to answer that it would likely require him to reveal attorney/client conf --

MS. DIPIRO: Got you. Okay.

THE COURT: -- communications because his lawyer's strategy for not putting something in evidence and he hasn't had a chance to put anything in evidence yet because he hasn't had his case start, all right. So don't ask that.

MS. DIPIRO: Yes. Yes. Okay. Thank you.

THE COURT: I'll sustain. You can't ask that.

MS. DIPIRO: Thank you.

THE COURT: But you can ask, you know, what -- you've already asked him what it is and now you -- you should try to establish what these line items are, what are they and how did they get put on this piece of paper.

BY MS. DIPIRO:

Q. Could you tell me what particular projects these were in reference to when you created -- when you created this spreadsheet?

MR. REGAN: I -- just so I understand the question, is she asking what projects are referred to on this sheet? Is that --

THE COURT: Now, you object to the question?

MR. REGAN: I -- no, I simply want to clarify it. I just want to know if that is the question.

THE COURT: Yeah, but we don't -- if you -- you can object. We don't -- I'm not going to --

MR. REGAN: Withdrawn, Your Honor. I just -- to me it's a question, but I apologize.

THE COURT: We'll see.

MR. REGAN: Okay.

THE COURT: Maybe he knows. He can --

MR. REGAN: Very well.

THE WITNESS: Can you repeat the question, please?

BY MS. DIPIRO:

Q. When you created the spreadsheet what project were you summarizing your expenses for?

A. All the projects that I was working on at the time.

Q. Could you please flip to page 2 of this presentation, this exhibit? Could you read what the payment subtotal is? It says "$60,452." Is -- what payment is that for? Does that total represent a particular project?

A. I believe that's for your project.

Q. So you agree that the income are only -- the only payments that are netted against his expenses are the payment for our project at 53 Marlboro Street?

A. I believe this is a breakdown of the expenditures on your project.

Q. Thank you. Could you please turn to page 2 of this exhibit? And if you look at the second section there's a total of $11,000 in payments associated with Chris; are you referring to Chris LeBlanc?

A. I am.

Q. Thank you. There is a $1,000 payment to Nate. Are you referring to Nate who works for Chris LeBlanc? And I am blanking on his name. Do you recall a Nate that works for Chris LeBlanc?

A. I disagree with that. Nate was working for Ground Up

Construction.

Q. Okay. How was Nate paid if he were to be paid by Ground Up Construction?

A. At the time he was being paid by cash.

Q. Who would the cash be given to to pay Nate?

A. At one time I paid him and Chris also received funds to pay Nate.

Q. Thank you. And so you agree that $3,200 was used to pay Nate for our construction project?

A. I agree.

Q. Thank you. Is that same sort of cash payment to Steve, $1,000, done the same way? Like how was he paid?

A. He was paid by -- with cash.

Q. Thank you. In your last statement you noted that you agreed with what Lance Construction was paid, which was a total of $12,000. If you look at materials there's two -- two charges for a ten -- $5,008 associate -- and I believe that's associated with Lance Construction. Do you agree?

A. I'm sorry, what are you looking at right now?

Q. First page under "Materials" there's two $5,008 payments.

A. Agreed.

Q. And then if you flip the page, the last number there's a $7,000 payment to Lance Construction.

A. Yes.

Q. Do you agree if I total those two -- those three numbers it comes to $10,017 -- I mean, it comes to $17,016?

A. That's correct.

Q. Now, you stated earlier that you paid him $12,000 so do you consider that -- is that correct?

A. I did pay him $12,000.

Q. So can you explain where you got the extra $5,000?

A. I believe when I pulled money from -- to put into a checking account I think that this might have been a duplication of the withdrawal to pay him and put it into the account, and then it might have been a duplication of just reviewing the actual cashier's check itself.

Q. So you're saying that you paid him out of your own monies and then --

A. I am -- I'm not saying that.

Q. Could you repeat the -- unclear as to how that -- that extra 5,000 got in there. Could you just clarify that for me?

A. I think it's a duplication of the withdrawal to create a cashier's check and then the receipt of the cashier's check.

Q. So it's an error, is that what you're saying?

A. I believe it is an error in here.

Q. Okay. Thank you. Do you think there might be any other errors in here?

A. That's possible.

Q. Okay. I showed you two checks for David Jaquith. They totaled 2,312. If you turn to page 2 of this exhibit there's two checks towards the very end: one for 1,000 and one for 1,312. Do you agree that those were the payment in full for his services?

A. I believe they are.

Q. Thank you. On the first page there's an additional personal cash payment to David Jaquith for $1,200 on 3/15. I believe I circled it. I did it on mine. It's $1,200. Can you tell us what that's for?

A. I don't know what that's for.

Q. Could you explain on the first page of this exhibit an --

MS. DIPIRO: At this point I'd like to admit this exhibit into evidence.

THE COURT: All right. So you're offering it now?

MS. DIPIRO: Yes.

THE COURT: All right. Objection?

MR. REGAN: I have the same objection as we detailed on the question of relevance, Your Honor.

THE COURT: All right.

MR. REGAN: Particularly with respect to not restricting funds to a particular project.

THE COURT: All right. So the -- what -- what

Mr. Regan is saying is that he doesn't -- he think -- he doesn't understand -- contest that this document is relevant because what it seems to show is use of cash. It seems to show transfers and so he wants me to ask you why is this relevant to your case on non-dischargeability?

MS. DIPIRO: Your -- thank you, Your Honor. It was presented to us at a 341 conference by Damian Anketell's attorney, Attorney Regan, as the funds he spent on our project. That's why we want to admit it into evidence.

THE COURT: All right.

MS. DIPIRO: And --

THE COURT: And what is it you're trying to say that -- so you -- you have -- your case so far, you know, is that he misrepresented to you that he had other work in the queue lined up and that he had experience, right?

MS. DIPIRO: Yes.

THE COURT: All right. How does this relate to those -- to those misrepresentations?

MS. DIPIRO: I think it relates in that he acquired money for our project and it was used on something other than our project as their -- this document has multiple counts of misrepresentation of where our funds went. So it -- it's --

THE COURT: All right.

MS. DIPIRO: It --

THE COURT: So you're also saying that he --

MS. DIPIRO: Misappropriated our funds I would say.

THE COURT: All right. Now, I'm going to find that's relevant under 523(a)(6) where there's an allegation of -- well, under 523(a)(6). It's relevant. It's in evidence. Now --

MS. DIPIRO: Thank you, Your Honor.

THE COURT: -- that is Exhibit number -- letter J.

MS. DIPIRO: That is J.

THE COURT: All right. That's in evidence.

Plaintiff's Exhibit #J Admitted into Evidence

Ladies and gentlemen, I am going to take -- you don't go anywhere. You can sit down and -- and -- but I'm going to go -- I'm going to go -- I'm going to be in recess on this matter for about three minutes, I suspect --

MS. DIPIRO: Thank you.

THE COURT: -- while I take another matter. All right. And so Mary is going to call that other matter. And now you can stay right where you and they'll find spots around you because I don't think this is going to take very long. Okay. All right.

And you can stay right there, Mr. Anketell.

(Off the record at 11:03:36 a.m.)

*** * * * * * * ***

(On the record at 11:10:00 a.m.)

THE COURT: All right. So we're going back on the record now in adversary proceeding of the Smiths v. Anketell. All right.

Let's -- and you were -- you were explaining to me I think the relevance -- oh, I'm sorry, I admitted Exhibit J based on your offer --

MS. DIPIRO: Thank you.

THE COURT: -- of proof and you were about to ask another question I think.

MS. DIPIRO: Thank you, Your Honor.

BY MS. DIPIRO:

Q. Mr. Anketell, if -- what was your purpose of compiling this spreadsheet?

A. I believe it was requested from my bankruptcy trustee.

Q. Thank you. When you look at page 2 of Exhibit J you -- we agreed that the payment total you're accounting for is $60,452, which is on the second page. It's highlighted in the yellow, correct?

A. Correct.

Q. We made an additional $11,000 payment to you. Do you agree with that?

A. You made the payment, yes.

Q. We also made an additional $6,000 payment to you. Do you agree with that?

A. Yes.

Q. Those payments are credited back to us via our credit card. Do you agree with that?

A. I believe they were taken back off the total that you paid, yes.

Q. Do you agree that that was done after you finished -- you left our job? That's the credit to our credit card?

A. I do.

Q. So do you agree that the $60,000 of payments while you were working with the Smiths might be 70 -- close to $78,000?

A. I do not.

Q. Thank you. You also come to a number at the bottom of this spreadsheet that says "Total payments minus expenses" that says $519.74. What does that represent to you?

A. I believe it is the difference between the amount that you paid and the amount that went out on the job.

Q. Thank you. When do you -- in your opin -- when did -- do you start construction on our project?

A. The project started August 15th, I believe.

Q. What -- what do you define as "construction"?

A. We started -- my four men and I went to site, worked up -- discussed the plans with you, what to go through and the expectations of the job.

Q. What was the first time you swung a hammer or started demolition?

A. I never swung a hammer there until February 4, 2015.

Q. Okay. Can I ask why you made payments to yourself? I want to know what the payments represent, the first three on page 1, for approximately $3,400 are checks written out to yourself and in -- it's October and November, what they represent.

THE COURT: Hold on.

MR. REGAN: Objection on relevance. The same points I've made earlier, Your Honor.

THE COURT: Overruled. Go ahead.

MR. REGAN: Thank you.

THE WITNESS: We started work on your project and I am an employee of the company. I got paid.

BY MS. DIPIRO:

Q. And what -- what did that represent?

A. Breakdown detail. We were on your site prepping your proposal, bringing the contracts up to you, going up to the job with you, going through the site with my employee, Kenny, the number of conversations, phone calls, that we had.

Q. Did you pay yourself anything for your payroll services during those months?

A. I believe I did, yes.

Q. Why would you pay yourself for your payroll services and then through individual checks?

MR. REGAN: Objection, Your Honor. Relevance.

THE COURT: Overruled.

THE WITNESS: I'm not quite sure.

BY MS. DIPIRO:

Q. Thank you. There's a figure that is for 30 -- $3,822, that's towards the bottom of the page above "Coffee" and "Coffee with Chris." Could you tell us what that figure represents?

A. Project overhead.

Q. And could you give me a little more detail as to what "overhead" represents to you?

A. Overhead is something that we charge. It could be anything from office supplies, services, cars, vehicle maintenance, a number of different things.

Q. Thank you. Can I now turn your attention to Exhibit -- I'll find it -- AA in your --

A. Is that AA?

Q. AA, yes. Two As. I have a lot of exhibits. Can we agree that some of the disputed items on the spreadsheet we just said are represented as disputed items on Exhibit AA?

MR. REGAN: Your Honor, I'd like to object. This is -- this appears to be a chalk drawn up by the plaintiff. I'll certainly be objecting to its introduction as an exhibit, Your Honor.

THE COURT: All right. Sustained.

Ask him -- you need to ask him what this is. Has he seen it before? What is it? Before you can ask this --

BY MS. DIPIRO:

Q. This is an exhibit that I have created. I -- I would like to know if you agree that 5,000 --

THE COURT: Wait, wait. What do you mean? You're asking me?

MS. DIPIRO: No, I'm asking him.

THE COURT: Oh.

MS. DIPIRO: Because I had --

THE COURT: Okay.

MS. DIPIRO: Oh, okay.

THE COURT: All right. I thought you were talking to me. It's -- you're telling him that --

MS. DIPIRO: Yeah.

THE COURT: -- this is something that you prepared.

MS. DIPIRO: Yes, I did prepare it.

THE COURT: All right. So he doesn't -- he doesn't know anything about this, right? This is some --

MS. DIPIRO: Yes. It's -- it's something I prepared to -- that is -- calculates the disputed items on the last spreadsheet we just saw.

THE COURT: All right. So you can use this as a chalk, we call it. It's a summary, that's all.

MS. DIPIRO: Yes.

THE COURT: It -- you wrote it. It's not evidence.

MS. DIPIRO: Excellent.

THE COURT: You can ask him -- you can show it to him and ask him if --

MS. DIPIRO: Whatever I want.

THE COURT: -- what you see here, you know, is something that he would agree with, I guess.

MS. DIPIRO: Thank you.

THE COURT: That -- that's about all you can -- can do with it. It's a demonstrative aid to the Court perhaps, but it's not an aid unless at some point in this trial you explain to me what it is.

MS. DIPIRO: Okay.

THE COURT: Do you understand what I mean?

MS. DIPIRO: Yes. Thank you, Your Honor.

THE COURT: All right. Go ahead.

BY MS. DIPIRO:

Q. Do you agree that $5,000 on your use-of-funds spreadsheet, the last one we just referenced, was a mistake in your calculation of expenses to Paul Lance?

A. Yes, I can agree to that.

Q. And do you agree that $1,200 that you applied to David Jaquith was over and above the $2,312 that you said you paid it in full?

A. I do agree with that.

Q. Thank you. And just to wrap this up could we just go back to the use-of-funds spreadsheet, which is J? Do you believe that there's any other errors on this document that you might have missed?

A. I don't see any.

Q. Thank you.

MS. DIPIRO: I'm going to actually -- is it okay if I pass the questioning over to Tim because this is the area that he's more refreshed with?

THE COURT: Are you going to be doing this throughout the trial? Are you going to --

MR. SMITH: I don't think so.

MS. DIPIRO: I don't think so either.

THE COURT: Only this witness that you'll take --

MR. SMITH: It is real quick.

THE COURT: -- turns?

MR. SMITH: I think so. Yeah.

THE COURT: All right. I'll allow it for this witness, but I -- I would prefer if -- I will not allow two lawyers to do this.

MR. SMITH: Okay.

MS. DIPIRO: Oh, okay.

THE COURT: All right?

MR. SMITH: That's okay. We can continue.

MS. DIPIRO: Okay. Then I can continue myself.

MR. SMITH: We will abide by the --

THE COURT: Well, you know, if it's going to be more efficient, if it's going to be quicker I will allow it for this witness because he's the defendant.

MS. DIPIRO: I'm okay.

THE COURT: But however you want to do it.

BY MS. DIPIRO:

Q. Could you please refer to Exhibit B, page 9? Could you explain -- are you familiar with the person you wrote the check out -- the document in front of you that says, I believe, "Mack Schwartz" (phonetic) at the top right-hand corner of this paper?

A. What was the question, please?

Q. Can you identify what that document is?

A. It is a check.

Q. Can you identify what that check is for?

A. I believe Mack Schwartz was owed money by Ground Up Construction where he was paid.

Q. For what purposes? What -- what was he doing for Ground Up?

A. I believe he represents a insulation company, I believe.

Q. Thank you. There -- can you identify the check on the right-hand side, one two, three -- four down to "Middlesex Survey" and can you tell me what that's for, for $500?

A. It is for a survey that Middlesex Survey did for

Ground Up Construction.

Q. Was Magnolia a project of Ground Up Construction?

A. Yes, it was.

Q. If you were to pay for a survey for a property that was a flip do you think that money should have came out of Ground Up Construction or Castle Hill?

MR. REGAN: Objection, Your Honor. Argumentative.

THE COURT: Well, it's cross -- it's essentially cross. I'll allow that, but I don't understand -- where are you going with this?

MS. DIPIRO: I'm showing that he paid checks for Castle Hill out of Ground Up and vice versa.

THE COURT: And the reason for that is what?

MS. DIPIRO: I don't know that he had enough funds in each account to pay the bills as they came in.

THE COURT: And the consequence of that is what?

MS. DIPIRO: Is that possibly our funds were used to pay Castle Hill expenses.

THE COURT: You're going to trace your -- the money that you gave to this gentleman to these payments? Is that what you're do -- going to be able to do?

MS. DIPIRO: Well, there's other payments. I'm just showing that some of the payments out of Ground Up were not for Ground Up projects.

THE COURT: Okay. Objection?

MR. REGAN: Yes, Your Honor. The objection, and I apologize if it's redundant, certainly stipulated the Ground Up funds -- first of all, the monies paid are fungible. Money is money. It's -- I object to them referring to it as their money. Expenditures that were made I don't mind if you put -- if they all go in but I don't believe that we're dealing with anything relevant here.

THE COURT: Okay. Over -- overruled.

Go ahead and ask him.

BY MS. DIPIRO:

Q. Can you tell me what -- what the funds were used for on check number 1051 made -- written out to Middlesex Survey?

A. To pay for a survey that they did for Ground Up Construction.

Q. Is it typical for your -- Castle Hill flip projects -- surveys being paid out of Ground Up Construction?

MR. REGAN: Objection to the form, Your Honor. The an -- the question presumes and argues that it's not a Ground Up project. He testified that this was a Ground Up project.

THE COURT: Okay. That's good. You've got your objection. Your objection is that it's the form of the question and the other -- well, okay. I'm going to sustain on the basis of form of the question. All right.

So you need to --

MS. DIPIRO: I'll move on.

THE COURT: But I don't know what a "flip" is. I don't know that he knows what a flip is. It's a problem. He probably does but I don't, so you need to ask him, "What's that?"

BY MS. DIPIRO:

Q. Could you explain what Castle Hill -- what the company Castle Hill was in business for?

MR. REGAN: Again, objection, Your Honor. Relevance.

THE COURT: Overruled.

MR. REGAN: Very well.

THE COURT: Go ahead.

THE WITNESS: We were in real estate investment business.

BY MS. DIPIRO:

Q. Could you give a little more details? Did you purchase properties?

A. Yes, we did purchase properties. We renovated them and then we sold them.

Q. Was Magnolia one of those properties?

A. It was.

Q. Is it typical to pay for a survey for a renovation project out of Ground Up?

A. Ground Up Construction was contracted by Castle Hill Properties to do a project renovation.

Q. Could you explain -- give me a brief explanation of what the responsibility of Ground Up was? Was it just employees?

MR. REGAN: Objection as relevance, Your Honor.

THE COURT: Overruled.

Go ahead.

THE WITNESS: I don't understand the question. Sorry.

BY MS. DIPIRO:

Q. What -- what was Ground Up's relationship with any renovations done by Castle Hill typically?

A. Typically or for that project?

Q. Typically.

A. Typically, we would be contracted out and to do a certain amount of renovation with certain portions of the renovation and we would do them.

Q. So was that particular labor -- labor-related expenses that Ground Up was in relation to Castle Hill?

A. I don't understand what you mean by "labor."

Q. Was it to do services like plumbing, electrical, framing?

A. We weren't electricians or plumbers. We would hire out plumbers, electricians or, in this case, a survey company to do a survey of the project.

Q. Thank you. Okay. I'm going to flip to Exhibit B, page 3 of 53.

A. Did you say page 3?

Q. Yeah. Page 3 of 53. Could you please go to the first line? This is Ground Up Santander Bank account. Could you describe what the $2,300 debit was on the first line?

A. I don't know what that was for.

Q. So you don't know. It does say "wire transfer," did it -- do you agree?

A. It does, yes.

Q. Do you have any other items say even on this statement that might have gone out that you can't account for?

A. I'm sure there are.

Q. Okay. Can we please turn to Exhibit B, page 9 of 53?

A. We're on B still?

Q. Yes. Actually, that -- I have that wrong one. I'm going to actually go to page -- sorry.

MS. DIPIRO: One second, Your Honor. I apologize.

BY MS. DIPIRO:

Q. Okay. Page 14 of 53. Can I ask you what construction you might had -- what construction project you were working on in February of 2015?

A. I don't have a comprehensive list, but I can -- off of memory there was your project, there was some ice dam projects that we did. We did a small kitchen I believe in February. That was up in Methuen. And we did a small water damage repair in Newton.

Q. Could you give me an estimate of those projects one by one, about how much it would have cost to do that?

A. I'm sorry. How much it --

Q. Could you give me an estimate of cost of -- I guess income of those projects and cost?

A. The cost of it, I don't have the number off the top of my head and the estimate on it of the -- of the amount that was supposed to be earned, including yours, about $125,000.

Q. Okay. Not including ours can you give me an estimate?

A. Approximately $15,000 maybe.

Q. And all of those projects were acquired in February like what -- were they acquired in February?

A. I believe they were, yes.

Q. Thank you. Could we look at page 14 of 53 and could you identify -- I'm sorry, that's 12 of 53. Could you identify on 2/4 a deposit of $14,000 as our deposit? Was that from us, the Smiths?

A. Yes, it was.

Q. There was a check on that same page for 98 -- for $3,000 written out to owner pay. Could you describe what that was being -- what you were paying yourself for?

A. That -- I don't believe that that was all to me. I wasn't the only owner of the company.

Q. Who are -- who is the other owner of the company?

A. Chris LeBlanc.

Q. Do you have any documents showing that he's the owner of -- was the owner of your company?

A. I don't have any handy, no.

Q. Was -- was there any -- was he on the LLC or the incorporation?

A. Actually, he was on the bank. He was an authorized user on the bank, yes.

Q. Was there a corporate resolution?

A. I'm not sure what that document is. I'm sorry.

Q. Okay. If you flip to -- so that was two days after you paid -- you paid yourself $3,000. How much do you think went to the -- to Chris LeBlanc out of the 3,000?

A. I'm going to disagree that I -- I paid. You just said I paid myself and I don't think that that was all to me. I stated that.

Q. Could we please turn to page 18 of 53 of that same exhibit?

A. Yeah, I'm there.

Q. Could you tell me what that check says under 4, the note on the bottom left-hand corner?

A. It says "owner pay."

Q. Okay. Could you tell me how much was given -- how much you kept and how much was given to Chris LeBlanc?

A. I can't off the top of my head.

Q. Thank you. Can you page -- turn to page 14 of 53 of that same exhibit? Can you ident -- on 2/6, 2/11, 2/17, 2/17 and 2/18 you withdrew $10,000 in cash. Can you identify what that cash revenue is for? The total is $10,000.

A. Not without referring to my records, no.

Q. Do you keep any kind of records, a ledger or an expense -- general expenses?

A. I believe there's one, yes.

Q. Do you have in -- in relation to the Smiths' project, our project, do you -- could any of those be related to our project?

A. Yes.

Q. Could any of these -- did you mention in a 341 conference that you made -- your wife loaned you money for --

A. Yes.

Q. -- for use of Ground Up Construction? Did you state that that -- those monies might have gone -- been paid back to your joint savings or her joint savings account?

A. Into a joint savings account, yes.

Q. Were any of those payments back to loaning yourself done -- during you working on our project?

A. I'd say yes. At some point, yes.

Q. Did you -- and did you say that some of the -- at the 341 conference that -- that she loaned you money and the money went into her personal account also?

A. I did not say that.

Q. Thank you. Could -- is it possible that any of these payments might have made it back into your joint savings account?

A. That's possible, yes.

Q. Thank you. Do you have any -- are you aware of any loan documents you have regarding money your wife loaned to you?

A. No.

Q. Thank you. Did -- we're going to now turn to --

MS. DIPIRO: I would like to admit this into evidence.

THE COURT: You mean all of --

MS. DIPIRO: The -- all the bank statements, yes.

THE COURT: Just Ground Up bank statement?

MS. DIPIRO: Just Ground -- yes.

MR. REGAN: Same objection regarding relevance, Your Honor.

THE COURT: Relevance. Can you lay a little more foundation as to the relationship between this witness and this Ground Up Construction? I need to -- I'm not sure I understand his relationship to it.

MS. DIPIRO: To Ground -- his relationship to the bank --

THE COURT: To Ground Up.

MS. DIPIRO: And how it refer -- it --

THE COURT: No. Just first foundation as to --

MS. DIPIRO: Oh, the other -- the bank statements for Ground Up Construction.

THE COURT: No. Just what is Ground Up, what -- who's its owner. You may have asked some of that already.

MS. DIPIRO: Oh, I was asking that because I was only aware of him being the own --

THE COURT: No. I -- I'm just -- I want you to ask some more questions so I can assess the relevance --

MS. DIPIRO: Got you.

THE COURT: -- of this. You may have asked some, but I've -- maybe I missed it, so --

BY MS. DIPIRO:

Q. Can -- can you tell us more about Chris LeBlanc's --

THE COURT: No. Just -- I don't want to interrupt you but --

MS. DIPIRO: Okay.

THE COURT: -- let me just ask.

THE COURT: Mr. Anketell, what's Ground Up? What is it?

THE WITNESS: Ground Up is a construction company that I owned. I was a shareholder of it. I was the owner/operator. I was employed there as a manager for the day to day.

THE COURT: All right. Is it -- it's -- it says on this document "Ground Up Construction, Inc." Was it incorporated?

THE WITNESS: Yes. Yes, sir, it was.

THE COURT: It was. And who owned all the stock in that company?

THE WITNESS: I did at the time of the beginning of it and sometime late 2014 Chris LeBlanc and I -- sorry about that -- Chris LeBlanc and I decided to combine our efforts to join together.

THE COURT: Did you give him stock in the company?

THE WITNESS: We were in the process of doing that.

THE COURT: But you never -- you never finished that?

THE WITNESS: No, sir. We -- he got on the bank accounts, the credit cards and all that. So we -- we were in the process of doing it.

THE COURT: Did you operate the Ank -- the Smiths' building project through Ground Up Construction?

THE WITNESS: Yes, sir.

THE COURT: Okay. All right. Objection is overruled. It's relevant.

MS. DIPIRO: Okay.

THE COURT: It's admitted.

Plaintiff's Exhibit #B Admitted into Evidence

BY MS. DIPIRO:

Q. Okay. Do you agree that Paul Lance started his construction project doing the framing and rough construction in and around March 18, 2014?

A. I believe that's accurate, yes.

Q. Do you recall a conversation you had with me stating that the progress of the construction Paul Lance was doing was moving along faster than you expected and that you thought that the project would be done in eight weeks instead of ten?

A. Yes, I remember that conversation and at the time I did believe that it was going to be -- it was moving along faster than we expected.

Q. Do you agree it was probably around the week of March 20th, which is two days after he started in and around?

A. I'm not exactly sure but I know that we scheduled framing for two weeks and it was progressing a lot faster than that.

Q. Okay. I -- I would like to turn to Exhibit G. So we've confirmed that Paul Lance started around 3/18. The document we're looking at is a summary of our deposits, when they are given, and the balance in the Ground Up Construction account before the deposit and the balance in the Castle Hill account before the deposit. Do you -- does -- do you agree that we gave you a deposit of $6,200 on 3/17, March 17th?

MR. REGAN: I object to the form of the question insofar as the term "deposit" is used.

MS. DIPIRO: I'll correct that.

BY MS. DIPIRO:

Q. Did you -- do you agree --

THE COURT: It's withdrawn.

Go ahead. Ask another question.

MS. DIPIRO: Thank you.

BY MS. DIPIRO:

Q. Do you agree that we gave you funds of $6,200 plus $1,300 totaling $7,500 on March 17th?

A. I agree.

Q. Do you agree that we also gave you deposit of $6,202 -- $6,232 on March 20th?

MR. REGAN: Same objection regarding the form of the question deposit, Your Honor.

MS. DIPIRO: Oh, sorry. I'm sorry. Yes.

BY MS. DIPIRO:

Q. Do you agree that we gave you funds of $6,232 on March 20th?

A. I agree.

Q. Do you think it's possible that that -- is it -- do you agree that that was the same day that you told me that the project is moving along more quickly eight to ten weeks or in and around the same time?

A. I'm not sure.

Q. Is it -- did you then say -- then -- did you then ask for another deposit for $11,000 that ultimately we paid on March 25th?

MR. REGAN: Same objection, form of the question, Your Honor.

BY MS. DIPIRO:

Q. Not deposit. Another -- another -- we gave you more funds of $11,130 on March 25th?

A. Agreed.

Q. Okay. Were you aware that on March 20th your deposit -- your balance in your Ground Up Construction account was negative $6,000?

A. I was not aware of that.

Q. Were you aware that your deposit -- your balance in your account on March 25th was $12,600 -- a negative $12,661?

A. I was not aware of that.

Q. Do you -- do you feel like -- I'm trying to ask this question with -- without being objected to. Do you -- do you -- is it possible that -- that we were in -- under the impression that you were liquid when we gave those deposits to you?

MR. REGAN: Objection. Calls for another state of mind.

THE COURT: Yeah. It's -- it -- that calls for him to speculate.

MS. DIPIRO: Okay.

THE COURT: You can ask him what he said, you said. That would be evidence of that but --

MS. DIPIRO: Yeah.

THE COURT: -- ask him to -- you're asking him to guess about that.

BY MS. DIPIRO:

Q. When you said to myself that you thought the project would be done in eight weeks instead of ten were you aware that you didn't have enough funds to finish the project?

MR. REGAN: Objection, Your Honor. It call --

THE COURT: Overruled.

MR. REGAN: Okay.

THE WITNESS: No, I wasn't.

MS. DIPIRO: Thank you.

BY MS. DIPIRO:

Q. During that same time, March 20th, did you -- when you told me that things were going to be moving along faster in eight weeks instead of ten did you tell me that Paul Lance was out doing background checks on the sub -- Chris LeBlanc -- Chris LeBlanc was out doing background checks on the subs coming in?

A. I don't recall that conversation.

Q. Is that something you might have said?

MR. REGAN: Objection, Your Honor.

THE COURT: It's sustained. Calls for speculation.

MS. DIPIRO: Okay.

THE COURT: When -- whenever you're thinking of asking a question about whether something might have happened, et cetera, then you're probably --

MS. DIPIRO: Yes.

THE COURT: -- asking a question that caused -- is asking him to guess about it.

MS. DIPIRO: Okay.

THE COURT: And we don't -- we don't -- that's not real evidence of anything. So --

MS. DIPIRO: Thank you, Your Honor.

THE COURT: -- it's not a permissible question. Can I ask you how much more you have from this witness?

MS. DIPIRO: I think I'm -- I think I'm -- okay. Okay. I have one -- one last question.

BY MS. DIPIRO:

Q. Do you agree that as of March 25th we paid $77,814 -- eight -- $77,814 towards a project as it -- as it confirms to contract?

A. I'm sorry. Can you rephrase that second part of the question?

Q. Do you -- do you agree that we paid $77,814 as outlined in the contract?

A. As outlined in the contract, I'd say no.

Q. And could we just turn to Exhibit A for one moment?

Could you -- and this is page 2 of 3. Could you tell me the cost -- estimated cost of demolition in framing per your contract approximately, based on page 2 of 3.

A. It looks like $33,000.

Q. And -- and you agree that we gave you close to 78,000?

A. I agree.

Q. And do you agree that -- that framing was not that -- do you agree that Paul Lance was not fully paid for his services?

A. I agree.

Q. What were his services? What was his -- what was he contracted to do?

A. Right off of recollection because I -- he was dealing with Chris with the contract, I believe framing and possibly installing windows, but I'm not 100 percent sure on the windows.

Q. You're not sure that he finished the windows. Is that what you're saying?

A. I'm not sure he was contracted for the windows or not. I -- I'm just going off of recollection.

Q. Do you remember if the windows were in when the contract was done?

A. When --

Q. Were -- were the windows in when the con -- when you left the con -- when you left the project?

A. As of April 3rd the windows were not in.

Q. Can you give me an estimate of how much of the contract you completed?

A. Up to rough framing was complete.

Q. Okay. And what -- and again, that totals $33,000?

A. That -- that's the expected cost of it but that's not what we contracted out for.

Q. And we gave you 78, correct?

A. You did.

Q. Thank you.

MS. DIPIRO: I'm done, Your Honor.

THE COURT: All right.

MS. DIPIRO: No further questions.

THE COURT: All right. So let me ask this question. You've got these folks sitting here. You've got, is it four witnesses here?

MR. SMITH: Three.

THE COURT: Three?

MR. SMITH: And the what -- two out of three. I don't see --

MS. DIPIRO: Yeah.

MR. SMITH: Oh, okay. I'm sorry.

THE COURT: You've got four?

MR. SMITH: We have three.

THE COURT: You have three witnesses. And how -- just how long are they going to take? These folks are sitting here all day and I don't want to make them sit.

MR. SMITH: Not -- not long.

MS. DIPIRO: They're a lot quicker. Lot -- a lot less questions.

MR. SMITH: Right.

THE COURT: Like how long? Ten minutes?

MS. DIPIRO: I don't -- Chris LeBlanc might be the longer of the two because he had more involvement with the project. And then Paul --

THE COURT: Well, you have three. You have three people here, right, that you want to --

MS. DIPIRO: Yes. Yeah. How long do you --

MR. SMITH: Right.

MS. DIPIRO: It's probably about an hour at least, right?

MR. SMITH: I would say -- I would say for Chris it could be half an hour. I think for Paul maybe about the same. I think it will be quick. And we don't need to call David Jaquith. He was -- this is the witness that might be called if we think it's --

THE COURT: All right. I'm just talking about who's here. All right. Of the people that are here you have two that will be a half-hour you think?

MR. SMITH: I'd say 45 minutes, the most.

THE COURT: Forty-five minutes.

MR. SMITH: Yeah.

THE COURT: And so --

MR. SMITH: And Mr. Jaquith probably for about 15 minutes. That's the architect.

THE COURT: Okay. Let's -- do you have any objection just getting some of these folks out of the way?

MR. REGAN: No objection, Your Honor.

THE COURT: Out of order?

MR. REGAN: No objection.

THE COURT: It's a tri -- it's a bench trial, you know. It's not like a jury is sitting here --

MR. SMITH: I know.

THE COURT: -- trying to figure out what you're doing. I -- I'll keep track of where this examination went. It's now going to be Mr. Regan's turn to ask his client questions normally, but I'm going to see if we can move it along a little better and let people go back to do what they do in the real world here, not sitting in my courtroom. All right.

All right. So why don't you go back to counsel table.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

(Witness excused.)

Why don't we start with whoever you think is quickest. Is that Mr. Jaquith?

MR. SMITH: Let's bring up -- we can call David Jaquith.

THE COURT: All right.

DAVID JAQUITH, SWORN

THE COURT: Good morning.

DIRECT EXAMINATION

BY MS. DIPIRO:

Q. Can I ask you how you first met --

MS. DIPIRO: Oh, I'm sorry.

THE COURT: You want to ask him his name.

MS. DIPIRO: Oh, I'm sorry. Can I have your -- I'm sorry.

BY MS. DIPIRO:

Q. Can I ask you your name?

A. My name is David Jaquith, registered architect.

Q. And can I ask you -- can you give a little information about yourself?

A. I've been an architect for 44 years and change. Graduate of Harvard, graduate of the Boston Architectural College and graduate of Wentworth Institute.

Q. Thank you. Can you let us know how you first met us?

A. I met you, the Smiths, through Damian Anketell.

Q. Thank you. Can you tell us when you first started drawings for the Smiths or when you first came into the home approximately?

A. I had a meeting with the Smiths probably in early November and then we came back I think around November 18th and measured parts of the second floor and the attic space, which was going to be renovated. And then we proceeded to draw that up over the next month. And then I was away over the holidays and finished it up in Jan -- drawings in January.

Q. Thank you. And in dealing with Mr. Anketell did you have any difficulty receiving payments from him?

A. I received my retainer in a timely manner from Ground Up and I made him aware when I finished the drawings and he was coming over for prints that payment was expected on the completion of the drawings. But when he got to my office he said he forgot his checkbook and it took me a good part of a month to get paid for that remaining payment. It was paid in February 12th, if I remember right, 2015 and that was a month -- almost a month after I finished the drawings and gave him copies for him for permit.

Q. Thank you. In October 2014 do you recall a phone call from Timothy Smith regarding Timothy's concerns with giving -- just giving Mr. Anketell our first deposit of $38,000? And do you recall a phone call with my husband regarding an initial -- our first deposit and his concerns that he couldn’t get in touch with me?

A. I remember that phone call, yes.

Q. Thank you. Did you recall that my husband was concerned that Damian Anketell told him that he brought materials and already paid the architect?

MR. REGAN: Objection, Your Honor.

THE COURT: Basis?

MR. REGAN: Relevance.

THE COURT: What are you trying to prove here?

MS. DIPIRO: That my -- we basically -- it was right after we gave our deposit. I just wanted to find out that he had to verify that we had concerns about our deposit immediately after we gave it because we couldn’t get in touch with Mr. Anketell.

THE WITNESS: Yes.

MR. REGAN: I’m sorry. I’m just standing until -- it’s the same objection. I’m not --

THE COURT: Well, she just told me --

MR. REGAN: Right.

THE COURT: What she did was respond to your objection so far.

MR. REGAN: Right.

THE COURT: Okay. Overruled.

But he didn’t answer it, so --

MS. DIPIRO: He didn’t answer. Yes.

BY MS. DIPIRO:

Q. So again, do you recall my husband being concerned about just giving -- just giving him a deposit of $38,000 and the fact that he said that he was buying materials and paying the architect, seeing --

A. I do and I wondered how he could pay for materials since the drawings were not anywheres near complete. So what materials would be -- were being bought at that time. Yes, the architectural fee, the retainer was paid, which was $1,000, but how could you order the materials?

Q. Thank you. How much were you ultimately paid by Mr. Anketell for his services?

A. Could you repeat the question?

Q. How much were you ultimately paid -- paid in total for your services?

A. $2,312.80. The additional monies were for copying costs, photographs, et cetera, expenses of the architect.

Q. Thank you. In all of your jobs do you recall contractors buying significant materials before their plans were complete?

MR. REGAN: Objection, Your Honor. This is not being offered as an expert witness. It's a comment on the industry in general.

THE COURT: Would you repeat your question?

BY MS. DIPIRO:

Q. In all of your jobs do you recall a contractor buying significant materials before the plans were drafted -- completed?

THE COURT: That's overruled. She's not asking for his expert opinion. She's asking for his experience. Overruled.

THE WITNESS: No, I don't ever recall in over 40-somewhat years.

MS. DIPIRO: Thank you. That's all. No further questions.

THE COURT: All right.

MR. REGAN: No questions, Your Honor.

THE COURT: All right. Thank you, sir.

MR. REGAN: You may go.

MS. DIPIRO: Thank you.

THE COURT: All right. You want to see if we can get another witness on and off so -- are they -- are they going to leave the courtroom and want to go back to do something else anyway? Is --

MS. DIPIRO: I would assume. I would call Anthony probably -- probably be the faster of the last one anyway.

THE COURT: Okay. Go ahead and call whoever you want, then.

THE CLERK: Please raise your right hand.

PAUL LANCE, JR., SWORN

MS. DIPIRO: Good afternoon.

BY MS. DIPIRO:

Q. Can you state your name?

A. Paul Lance, Jr.

Q. Could you tell us a little bit about your occupation?

A. I'm a framing contractor. Being doing it probably 15 years.

Q. Could you explain how you met Mr. Anketell?

A. I met Mr. Anketell through Chris LaBlanc at a Starbucks in Beverly. It was the first time I knew Damian was even part of the project.

Q. Okay. Thank you. At any point in your working with Mr. Anketell and Ground Up and Chris LeBlanc were you asked to do any background checks on yourself or on any of your employees?

A. Never.

Q. Thank you. What -- did they ever -- did Ground Up, Chris LeBlanc or Mr. Anketell ever tell you that a background check would be a requirement in order for you to work for the project?

A. No.

Q. Thank you. Can you relay any misrepresentations made to you during your work on our project?

MR. REGAN: Objection, Your Honor.

THE COURT: I'm going to sustain that because it's a legal term, "misrepresentations." You can ask him what he was told if he was told something by Mr. Anketell that was untrue.

MS. DIPIRO: Okay.

THE COURT: That's different from "misrepresentation," which is a legal term.

MS. DIPIRO: Gotcha.

THE COURT: Right?

MS. DIPIRO: Yes, gotcha.

BY MS. DIPIRO:

Q. Was there any statements by Mr. Anketell or any of his employees that might be untrue during your work on a project?

MR. REGAN: Objection.

THE COURT: Basis?

MR. REGAN: Might be and other employees as opposed to Mr. Anketell.

THE COURT: All right. Fair enough. You need to ask some more questions and only ask for one little thing. What did he tell you?

BY MS. DIPIRO:

Q. Were there any untruths told by Ground Up Construction or Mr. Anketell?

THE COURT: Sustained. That's objectionable because it's compound. We don't know whether it's from Mr. Anketell or others.

MS. DIPIRO: Okay.

BY MS. DIPIRO:

Q. How much were you paid for working on our project?

A. I was paid $1,000 cash twice, one day after another; and then I believe it was a $3,000 cash payment the following day; and then a $5,000 bank check that following Friday. I was given a $7,000 bad check the week before.

Q. Thank you. In total how much were you paid?

A. I think it's $10,000.

Q. Gotcha, 10. How much were you owed for the job, approximately?

A. $11,000.

Q. When you left our project was the family -- rough construction complete?

A. No, it was not.

Q. Can you explain what wasn't complete?

A. We had to do all the interior partitions. We had to -- it was an added cost. We were going to re-plywood the floor and install all the windows.

Q. Thank you. When your -- when the -- when you were issued an insufficient funds check why would you return to our job?

A. Because I'd probably be sitting on that side of the room. I mean --

Q. Okay.

A. I mean, we had one-half of your home done, the other half was covered with a tarp, so we -- I finished it because I -- we had to.

Q. When you say "covered with a tarp," it was totally open to the elements, correct?

A. Correct.

Q. That's it. Oh, how much are you owed from Ground Up Construction?

A. I figured $9,000.

MS. DIPIRO: That would be all. Thank you.

THE COURT: All right.

MS. DIPIRO: Thank you.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. REGAN:

Q. Mr. Lance --

A. Yes.

Q. -- you are a creditor in the bankruptcy matter of Mr. Anketell, are you not?

A. I am.

Q. And you're also a creditor in the matter of Ground Up's bankruptcy?

A. I guess so, yeah. I thought it was the same, but okay.

Q. Okay. And do you know if you're a creditor in the

Castle Hill bankruptcy?

A. I don't believe I am.

Q. Okay. Thank you, sir.

MR. REGAN: No further.

THE COURT: All right. Anything further from you?

MS. DIPIRO: No.

THE COURT: All right.

MS. DIPIRO: No, thank you.

THE COURT: Thank you, sir.

THE WITNESS: Thank you.

THE COURT: Thank you for coming in.

MS. DIPIRO: Thank you, Paul.

THE COURT: Go frame something up or whatever you do.

MR. SMITH: Thanks for coming back, too.

MS. DIPIRO: Thanks for the help.

(Witness excused.)

THE COURT: All right. Why don't we keep going? Do you want to call another witness? Guess we'll start him and --

MS. DIPIRO: The next --

THE COURT: Sorry?

MS. DIPIRO: The next witness would be Chris LeBlanc.

THE COURT: All right.

THE CLERK: Raise your right hand.

CHRISTOPHER JOE LEBLANC, SWORN

DIRECT EXAMINATION

BY MS. DIPIRO:

Q. Good afternoon.

A. Good afternoon.

Q. Could you state your full name, please?

A. It's Christopher Joe LeBlanc.

Q. And can you give me a little information about your occupation?

A. Yes, I'm a general contractor. I've been doing construction on my own for about 16-plus years.

Q. Thank you. Could you tell us how you met Mr. Anketell?

A. Damian and I work in the same city so through high school we've known each other. I knew he was dabbling in construction and that's how we know each other.

Q. How did you end up going in, working with Mr. Anketell in Ground Up Construction?

A. I was approached by Damian to work on your project.

Q. Why did he ask you to work on our project? Did he --

MR. REGAN: Objection, Your Honor.

MS. DIPIRO: -- specify?

THE COURT: Say that again?

MR. REGAN: I object. She's asking for state of mind on why did he ask.

THE COURT: Okay. What was your question again? Tell me it.

MS. DIPIRO: Why he was asked to work on our project.

THE COURT: Well, so I'll sustain that. You want to ask him what he was told.

MS. DIPIRO: Yeah.

BY MS. DIPIRO:

Q. Were you asked to work on our project because the prior framer, Kenny Lefrenswa, was no longer the framer for the project?

A. I believe so.

Q. Were you aware that Mr. Anketell informed myself and my husband that you were out doing background checks on subs in and around when Paul Lance was doing the framing?

A. No.

Q. Did you ever do any background checks on Ground Up employees or subcontractors?

A. I did not.

Q. Were you ever asked by Mr. Anketell to do background checks?

A. I was not.

Q. Were you a subject of a background check by Mr. Anketell?

A. I don't believe so.

Q. Looking back on the experience of working on a project were there any reasons why you might not have worked with Mr. Anketell now knowing what you know?

MR. REGAN: Object to the form, Your Honor.

THE COURT: That's sustained.

MS. DIPIRO: Sustained for the question.

BY MS. DIPIRO:

Q. Did you have -- when you started with Mr. Anketell did you have any idea of his financial condition, meaning Ground Up Construction?

A. I did not.

Q. What did Damian Anketell tell you? Did he make any conversation -- did he make any implication as to his financial situation when you started?

MR. REGAN: Object to the form with respect to "implication."

THE COURT: I'll sustain. I don't know what that means.

MS. DIPIRO: Did he --

THE COURT: It's vague.

BY MS. DIPIRO:

Q. Did he state to you his financial condition when you started?

A. He did not.

MS. DIPIRO: At -- yes. Could I actually have him do the rest of these because they're more what he's researched?

THE COURT: All right. So for now on, though, pick a --

MS. DIPIRO: Yes.

THE COURT: Pick somebody to ask question. No, go ahead. Don't let me change you --

MS. DIPIRO: Okay.

THE COURT: All right.

MS. DIPIRO: Thank you.

MR. SMITH: Thank you, Your Honor.

THE COURT: Let's give it a try. Okay. Go ahead.

MR. SMITH: Okay.

DIRECT EXAMINATION

BY MR. SMITH:

Q. Mr. LeBlanc, so I guess the questions that we're concerned with is, why did you sign on with Damian? You had your own thing going, correct? What was it about? I'm sure it's a pretty good move to --

MR. REGAN: Objection on relevance, Your Honor.

THE COURT: Overruled.

You can answer.

THE WITNESS: I decided to work on the project. It looked like a fun project to work on.

BY MR. SMITH:

Q. Why did you decide to consider joining forces with Mr. Anketell to begin with, aside from our project? I know you were on our project, but there was talk about consolidation of both of you and things of that nature. You can -- actually --

A. I don’t understand the question.

Q. So aside from the project you were talking about joining forces and combining with Ground Up Construction.

A. He approached me to join the company and I said to -- we should do a project together.

Q. Um-hum. Do you recall any conversation --

THE COURT: Hold on. Just get that microphone. Pull it right to you, okay?

MR. SMITH: Is that better?

THE COURT: It sounds like it is.

MR. SMITH: Yes.

THE COURT: Go ahead. Ask that question.

MR. SMITH: Okay.

BY MR. SMITH:

Q. So I was asking if there was something that got you excited about the project. Were there statements made that you thought it would be a great opportunity to combine and -- you know, grow your business and combine it into a really interesting --

MR. REGAN: Object. It’s compound.

MR. SMITH: Okay.

BY MR. SMITH:

Q. What -- if you could name one thing as to why you considered joining up with Ground Up, what would it be? What would be the one?

A. I wouldn't consider "joining up" with Ground Up Construction. I'm a general contractor. I'm not -- I'm contracted out to work on lots of projects.

Q. Were there potential benefits related to you that would make -- appeal to you by Mr. Anketell?

A. Not by Mr. Anketell, but the location.

Q. How about benefits monetarily, how to combine business? Was it represented that the combined business would be a strong entity?

MR. REGAN: Object as that is also compound, Your Honor.

THE COURT: Unbundle that. Sustained. Just one question at a time.

BY MR. SMITH:

Q. How was the combined entity portrayed to you? In other words, was there a proposal made to you by Mr. Anketell regarding combining, bringing you on?

A. I believe it was my expertise in the field.

Q. Um-hum. And did Mr. Anketell have any expectations about the future that he related to you?

MR. REGAN: Objection, Your Honor.

THE COURT: Overruled.

MR. REGAN: He's -- well, the form of the question is, did Mr. Anketell have expectations.

THE COURT: Overruled. He asked him if he told him about expectations. That's permissible.

THE WITNESS: Yes, he did.

BY MR. SMITH:

Q. Can you expand on that and maybe give us some color?

A. Future projects.

Q. Can you be more specific? Were there future projects?

A. Working in collaboration, not *per se* me joining the company but me keeping my own company and working on other projects together.

Q. Okay. So looking back now after all this happened, how would you describe those statements to you?

MR. REGAN: Objection, Your Honor. What statements?

THE COURT: The statements he just referred to. Overruled.

THE WITNESS: I believe that I was lied to.

MR. SMITH: Thank you.

BY MR. SMITH:

Q. Okay. Mr. LeBlanc, so a few more questions here. I'm just finding my place, so -- okay, we'll ask you the same question we asked Mr. Lance. Was rough framing and construction complete on our project?

A. No, it was not.

Q. It was not completed. Can you -- why was it not complete?

A. The windows weren't in, the roof wasn't on, there were no petition walls, the attic floor needed to be plywooded (phonetic).

Q. That's okay. That's quite a list of things, it sounds like. How much -- Mr. LeBlanc, how much were you paid in total by -- how much money did you receive? Let's go -- let's try that because I'm not sure where the money came from. I don't know if there were checks divided or what. How much were you paid in total for our project?

MR. REGAN: Object to the preliminary comments, Your Honor.

THE COURT: All right. I'll consider them stricken. He can answer it.

How much were you paid?

THE WITNESS: I received $2,000.

MR. SMITH: $2,000.

THE WITNESS: In checks.

MR. SMITH: In checks.

BY MR. SMITH:

Q. Okay. And now I understand that Nate and Steve were working for you.

A. Correct.

Q. Correct. And so how long -- were they paid any money at all?

A. No, they were not.

Q. Were they given any -- were there any services that were provided? Is there any way to -- any attempt to make them whole?

A. I did that.

Q. Can you -- as a -- so this was -- they were out in the cold and you made an attempt. Can you explain a little bit about that?

A. I ended up paying them after I left that project.

Q. So you paid them out of your own pocket?

A. Correct.

Q. And you're out that -- that money?

A. Correct.

Q. Thank you. How much are you owed, Mr. LeBlanc, on this job?

A. Not counting my own hours, I believe I paid about $3600 out.

Q. And you said not counting your own hours.

A. I received $2,000.

Q. Right. So you are owed $3600?

A. $3600 for what I paid out and --

Q. Oh, I see. I see. So all in all total, what you're owed personally, what your subcontractors are owed.

A. If I would say, it would probably be around $7500, possibly $10,000.

Q. Thank you. Do you recall Ground Up Construction having any other jobs in 2015, Mr. LeBlanc? Construction jobs, I should say.

A. No construction jobs at the time, no.

Q. No construct -- but there were other jobs. If you could describe the nature of those jobs.

A. We started showing those -- shipping those (indiscernible) sales.

Q. Say the last -- okay. Why did the project stop?

A. I became aware that there was no money.

Q. Okay. When did you become aware of that?

A. I believe it was in the area of around March 25th.

Q. 25th. Okay. How did you become aware of that?

A. Because my name was on the bank account at that time.

Q. Okay. Okay. A slightly unrelated question. When did demolition start to the best of your recollection?

A. In March.

Q. In March. Can you be more specific, by any change? If you can't, that's fine.

A. I would say the first week, possibly the second week of March.

Q. Thank you. Okay. I have just a few more. Okay. Let's talk about the meeting. Okay. The final meeting that we had. Can you just describe events that led up to that meeting because you called that meeting.

A. I did.

Q. Can you expand on why you called that meeting, the purpose of that meeting?

A. Because I became aware that there was zero funds.

Q. Okay. And then you thought you had -- what happened next? What was your thought process?

A. I felt that I should bring it to your attention.

Q. Okay. Thank you. So forgive me. We were up late doing this. Sorry. Okay. So I have just a few more questions. Did you provide us with any information, any statements?

A. I did.

Q. Okay. And can you describe what these statements were and what they showed?

A. I requested Damian to give me the Ground Up Construction bank statements.

Q. Okay. Thank you. So I understand you gave my wife a note.

A. I did.

Q. Now, this is an exhibit. I didn't know about this and I just read about -- what -- can you describe a little bit about the note and when it was handed off to us and what were the --

A. It was handed to you after the meeting.

Q. Thank you. Okay. Do you have the book in front of you of exhibits, Mr. LeBlanc?

A. Yes.
Q. Okay. I'm going to direct your attention to Exhibit P. Exhibit P.
A. P?
Q. P for Paul. So let me know when you find it. Do you have it? Okay.
A. Yes, I do.
Q. Okay. So -- okay, so there's some pretty interesting observations on this.
MR. REGAN: Object to the comments, Your Honor.
THE COURT: Yeah. Don't testify at this stage.
MR. SMITH: Oh.
THE COURT: Mr. Smith, just ask this witness questions.
MR. SMITH: Okay.

BY MR. SMITH:

Q. Statement one, I'm going to read that. "Not happening. Was spent not on your project." Is that -- am I correct in -- am I reading that correct? I'm sorry. I've got it marked on my -- I see it, it says, "Not happening."
THE COURT: Well, just have him read it. It's his handwriting.

BY MR. SMITH:

Q. Please read it, Mr. LeBlanc, if you could.
MS. DIPIRO: It's not on --

MR. SMITH: Oh, okay.

THE WITNESS: "Not happening. Was not spent on your project."

MR. SMITH: Okay.

BY MR. SMITH:

Q. What made you -- strike that.

A. I saw the bank records.

Q. And you know that it was not spent on our project?

A. No. It was -- the bank record that I saw was October to November and by the time it got to November 1st all the money was liquidated.

Q. And construction hadn't technically begun yet at that time?

A. No.

Q. Okay. So I'm going to move down to number 5. Okay. And number 5 says, "Compulsive liar." And I'm going to ask you again, what made you write that down on this note?

A. I was constantly being lied to.

Q. Can you give some examples of that?

MR. REGAN: Objection, Your Honor.

THE COURT: Basis?

MR. REGAN: Statements to this witness are not probative of any live -- or any statements made to Smith and DiPiro.

THE COURT: Why are you trying to get this in,

Mr. Smith?

MR. SMITH: I think -- I think it -- I think it impeaches the character, if that's relevance, and would lead to some of the other -- I think it gives more credence to some of the other misrepresentations that we're going to speak of later, alleged misrepresentations.

MR. REGAN: He's offering characters -- evidence, Your Honor, which it's not relevant at least.

THE COURT: All right. Hold on. So that brings us to Federal Rule of Evidence 405, "Methods of proving character." All right. So Rule 405(b) says:

> "Methods of proving character: By specific instances of conduct. When a person's character or character trait is an essential element of a charge, claim or defense, the character or trait may also be proved by relevant specific instances of the person's conduct."

And so we have here a claim under 523(a)(2)(A) as to fraud in the nature of misrepresentations and so we have a specific instance of conduct that -- in which the creditor, Mr. Smith, is attempting to establish through other instances -- specific instances of conduct that would support the inference that the other statements that were made in this case were untrue. So I will overrule the objection; I'll allow the testimony.

MR. SMITH: Okay.

BY MR. SMITH:

Q. So just to refresh, so it was number five where you've written "compulsive liar." So we're looking for some examples of that --

A. I was told that those ordered for your project. And through my research of calling the lumber yards, actually visiting the lumber yards, was aware that they were never ordered nor did he ever speak to anybody in the lumber department or the order department. Also, he -- I contacted the HVAC. That would be the mechanical contractor directly and I was told that there was a deposit for the mechanical to be done and they were not aware of any deposit made.

Q. You were told that by Mr. Anketell that there was a deposit?

A. I was.

Q. Okay. So what prompted you to investigate these? Was this prior to you looking at the bank statements?

A. It was a few things that just kind of started putting up red flags to me.

Q. If you don't mind, we'd like to hear them if you can remember them.

A. The windows would be one.

Q. Okay. Thank you. Just a few more. So there are also some statements made to us regarding jobs that were in the pipeline, correct? And there was a document provided to us that outlined these jobs.

MR. REGAN: Testifying again.

THE COURT: Yeah. Just ask him questions.

MR. SMITH: Okay.

THE COURT: This is not a hostile witness. This is your witness, so you're going to need to not lead him.

MR. SMITH: Can we go to Exhibit R, please?

BY MR. SMITH:

Q. Exhibit R, page 4 of 4. I think that's marked up and I apologize. I wrote on that, but -- so we asked for a list of jobs.

MR. REGAN: Objection, Your Honor. Testifying again.

MR. SMITH: This is at -- could you take a look at it and see if --

THE COURT: Well, wait a minute. Wait a minute. There's an objection.

MR. SMITH: Oh, sorry.

THE COURT: So I will allow it as refocusing the witness, which is permissible examination. Overruled.

MR. SMITH: Okay.

BY MR. SMITH:

Q. So I just want to talk a bit about the document so Mr. LeBlanc can understand what it is. This was a document provided to us --

THE COURT: No, this is not refocusing.

MR. SMITH: Oh, I'm sorry.

THE COURT: Yeah. You're now -- you are now testifying.

MR. SMITH: Oh. Oh, okay.

THE COURT: You can refocus him, but this is over the -- this is not permissible examination now. Ask him --

MR. SMITH: Okay. Okay. I think I understand, Your Honor. Sorry.

BY MR. SMITH:

Q. There's a list of jobs under "Address of Project" you'll see. And if you can point out which jobs were procured by you in your capacity, only in your capacity, prior to working and being associated with Ground Up.

A. Avenue (indiscernible), 61 Hill Road, Manchester.

Q. Okay. So it's just that -- just that one job.

A. Yes.

Q. Okay. And that's the largest job here, looks like. Okay. And that -- do you know if the dates are correct on the other jobs, by any chance? Were you involved in those jobs?

A. No, I was not.

Q. Okay. Thank you. Now, some of the jobs under "client name" has question marks and then Chris. And I believe those are jobs that you had also procured. Is that possible that you -- or talk about them?

A. Yes. Snow removal.

Q. Snow removal. Okay. Thank you. Okay. Now, let's -- there's some representations -- some statements about the meeting that we had on the 4th.

MR. REGAN: Objection, Your Honor. He's testifying.

MR. SMITH: We had a meeting on the --

THE COURT: No, hold on.

MR. SMITH: Sorry.

THE COURT: When he objects, then you have to wait for me to say something. Okay? You can't just go right back at him. So, no, I don't know where you're going with this, but it's permissible to refocus him. So you could you say, "You've testified about the meeting that occurred on."

MR. SMITH: Okay.

THE COURT: That's okay. That's refocusing. All right. Now, you can't start explaining to him what you think happened at that meeting. I'm not interested in what you think about it now.

MR. SMITH: Right.

THE COURT: I'm interested in what he thinks about it, what he remembers about it. And that's why it's useful for you not to --

MR. SMITH: I understand.

THE COURT: -- tell him what you want him to say, but let him say what he remembers.

MR. SMITH: Right.

THE COURT: Okay. So I'll sustain that objection and tell you to go ahead and ask him a question.

MR. SMITH: Digest that (phonetic).

THE COURT: Well, you're back to the meeting that occurred, right?

MR. SMITH: Okay.

THE COURT: All right. What happened?

BY MR. SMITH:

Q. So the final meeting, can you describe the final meeting that we had -- that you had instigated?

A. It was a meeting to -- for Damian to tell you that he spent all your money.

Q. Okay.

THE COURT: Well, who was there?

MR. SMITH: Okay.

THE COURT: I wasn't there, so you need --

MR. SMITH: It's a good question.

THE COURT: I know it's a good question. So I want to hear about the meeting.

MR. SMITH: Right.

THE COURT: Who was there? Why did it occur and who said what to whom?

MR. SMITH: Right. I think we -- it occurred because you said -- he's testified about it.

THE COURT: All right. Well, go ahead.

BY MR. SMITH:

Q. Who was at the meeting, Chris?

A. It was Damian and I and you two.

Q. Okay.

A. Mr. and Mrs. Smith.

Q. Thank you. Before we get to -- I need to ask you one more question. Did we throw Ground Up off of the job at any point that you're aware of?

A. Not that I'm aware of.

Q. Okay. Okay. Did we make any threats during that meeting? Did I threaten Mr. Anketell in any way, would you say?

A. No, you did not.

Q. Thank you. Was there discussion of possibly finishing the project in some capacity, recapitalization, borrowing more money?

THE COURT: Sustained. Leading. Okay. Just ask him what happened.

MR. SMITH: Okay.

THE COURT: Who said what to whom?

MR. SMITH: Right.

THE COURT: What does he remember?

MR. SMITH: Okay. Let's just go through the whole thing.

BY MR. SMITH:

Q. What do you remember from the meeting, Chris? Be as specific as possible.

A. I remember Damian telling me that he was going to try to restructure his company and take out a loan and finish the project.

Q. Okay. Did you believe it?

MR. REGAN: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. SMITH:

Q. Why not?

A. It just seemed to be one more lie on top of a fistful of lies.

MR. SMITH: No further questions. Thank you, Mr. LeBlanc.

CROSS-EXAMINATION

BY MR. REGAN:

Q. Mr. LeBlanc, in the course of the meeting on April the 3rd could you describe Ms. DiPiro as being --

THE COURT: Get back to the microphone, counsel.

MR. REGAN: Excuse me.

THE COURT: You can come up here if you want, if you like being closer to the witness but just use the microphone.

BY MR. REGAN:

Q. Sir, would you describe Ms. DiPiro as being very emotional and overwrought during the meeting?

A. Who? Ms. DiPiro?

Q. DiPiro, yeah. Theresa DiPiro.

A. Yes, she was.

Q. And you recall that she accused Mr. Damian of being -- Mr. Anketell being a thief and stealing the money?

A. She was very distraught.

Q. Do you recall that -- essentially that comment coming out of her mouth as well?

A. I don't recall.

Q. Okay. By the way, did you continue to work on this project after April the 3rd?

A. I was in contact with them. I did secure a roof -- did put a roof on because it was leaking to the house.

Q. What else, if anything, did you do on the project after April the 3rd?

A. That was all.

Q. You said you were paid $2,000 in checks. Did you receive any payments in cash with respect to this project?

A. No, I did not.

Q. Now, you and Damian were acting in sort of a joint venture with respect to the Marlboro Street property. Would that be accurate?

A. No.

Q. Did you and he have an agreement with respect to splitting profits on the job?

A. No.

Q. Were you just on as an hourly employee? Is that your testimony?

A. I'm a general contractor.

Q. I understand that. Were you -- okay, were you on as a contractor with a certain scope of work and a certain price for that work?

A. I was hired on as a general contractor. I wasn't promised any profit.

Q. Okay. Were you promised payment?

A. Yes.

Q. Okay. Would you describe what the scope of your contracting was on that job and what you expected as payment under that contract?

A. Well, there was no contract.

Q. You and Mr. Anketell were working under an agreement. You said you came on as the general contractor, right?

A. I said I came on as the general contractor, correct.

Q. Okay. Now, was it Chris LeBlanc general contractor or Chris LeBlanc in conjunction with Ground Up general contractor?

A. I have my own company.

Q. I understand that. Were you and your company working in tandem with Damian and his company on that project?

A. I don't understand the question.

Q. Okay. You are on the project with your company, Damian was on the project with his company, true?

A. All the employees were on the job.

Q. My question is, were you and your -- you and your company on the job together with Damian and his company on the job? Were you -- both of you and both of your companies participating in this job?

A. That would be fair to say.

Q. Okay. And in conjunction with that I presume you and your company had some expectation of being paid for your efforts. Would that be true?

A. Yes.

Q. Now, you said there's no written contract, no writing between you and Damian concerning who did what on the job. Would that be true?

A. There was no contract, correct.

Q. Okay. Was there an agreement and an understanding between the two of you, even though it had not been reduced to writing?

A. I was told what?

Q. Your participation in the project.

A. Yes.

Q. Okay. Would you describe your understanding of what the agreement was between you and Damian or your company and his company?

A. I was to oversee -- I was to be the site super on the job.

Q. Okay. Is there anything else in your agreement between yourself and Damian and your company and his company?

A. As to what?

Q. Your participation in the job. You've got -- you've listed one item which you're the site supervisor. Are there any other elements to the agreement between you with respect to your participation?

A. To be site super.

Q. Okay. Were you doing it for free?

A. I didn't think I was.

Q. Okay. Did you have an agreement with Damian and his company with respect to payment or movement of monies between you as a contractor and his company?

A. Yes.

Q. All right. What was that agreement, if any?

A. It was an hourly basis.

Q. Okay. So you're saying that you -- did you bill Ground Up? Did you bill Damian individually? How was that all done?

A. We didn't get to that point.

Q. You didn't. Okay. When did you first walk onto that job?

A. I believe the first time I personally walked on the job was in November.

Q. Okay. And between November and, let's say, April the 3rd, do you have an estimate as to how many hours you spent on that job?

A. No, I do not.

Q. Did you write any time slips from week to week or month to month in order to have a basis upon which to charge him?

A. I didn't go back working on the project until after January. I was doing my own projects.

Q. My question, sir: did you keep any time records with which to sustain or substantiate an hourly charge?

A. Yes.

Q. Okay. Were those ever -- were those ever delivered to Damian or to Ground Up?

A. We didn't get to that point.

Q. Okay. When is the last time you made out such a document?

A. What was your question?

Q. When is the last time you made out a time slip?

A. To whom?

Q. Time slip with respect to the hourly charge you expected on this job?

A. We didn't get to that point.

Q. So you didn't make any out?
A. I personally did not, no.
Q. Okay. Isn't it fair to say that you and Mr. Anketell were basically working together as co-principals of this job?
A. No.
Q. Okay. You've identified a couple of statements that you think were false by Mr. Anketell. One had to do with ordering the windows. With whom did you speak, if anybody, concerning that order?
A. The representatives at Monaham Lumber.
Q. When did that conversation occur, if you recall?
A. It happened on approximately March 20th.
Q. March 20th. Okay.
A. Yes.
Q. And you said something about a deposit with the HVAC contractor. When did that conversation occur?
A. In that general vicinity as well.
Q. All of this is toward the end of March in 2015, correct?
A. Correct.
Q. Is this before or after you became aware of Mr. Anketell's financial difficulties?
A. Before.
Q. Okay. And tell me more about the matter of the deposit with the HVAC contractor. With whom did you speak,

what did you ask and what were you told?

A. I called the company that Damian said he made a deposit with.

Q. Who was that company, if you recall?

A. I don't recall.

Q. Oh, so you don't know from whom you heard this, but you called somebody?

A. No, I just don't recall the name of the company.

Q. So today all you can tell us is you called somebody you think was the right person to ask, right? That's all that's in your memory today, right?

A. Excuse me?

Q. That's the only thing you can recall, that you may recall, but you cannot tell us who by name?

A. Correct.

Q. Okay. Then what you -- and then do you have an understanding as to what capacity that person had with the company that you were calling?

A. He was the owner.

Q. Okay. And again, you don't know his name?

A. I never used him before.

Q. My question is, do you know his name?

A. I do not.

Q. Okay. What did you say to him and what did he say to you?

A. I asked him if there was a deposit for the said property by Ground Up Construction.

Q. What was your understanding of what the deposit was supposed to have been?

A. It was in the amount of $5,000 and some change and that was told by Damian to me.

Q. Okay. By the way, the meeting on April the 3rd, is it -- that was a previously scheduled status conference with the customer, wasn't it?

A. I don't understand.

MS. DIPIRO: Objection. I think he's putting -- he's answering the question as well.

THE COURT: Yeah, it's cross-examination. He's supposed to do that.

MS. DIPIRO: Okay. Thank you.

THE COURT: It's okay. Overruled. You can do that on cross, too.

MS. DIPIRO: Okay. Thank you.

BY MR. REGAN:

Q. You had a meeting on April the 3rd. Now, over the course of the job were there certain times when you and Damian would meet with the Smiths to review the status of how things were going?

A. Damian met with the Smiths as to the advancement of the project.

Q. Did you ever participate in those meetings as the construction supervisor?
A. They were done over the phone.
Q. Did you ever participate?
A. No, I did not.
Q. You've never been involved in status meeting with the Smiths before April the 3rd?
A. Not that I can recall.
Q. All right. Do you know that this was previously scheduled by Damian with the Smiths?
A. I was unaware of that.
Q. That's fair to say you were pretty upset with Damian by the time that meeting rolled around, isn't it?
A. I was trying to give him the benefit of the doubt.
Q. My question is, were you upset with him, sir?
A. Not at that time, no.
Q. Did you become upset with him before that meeting started?
A. I just answered that, no.
Q. Okay. But you wrote down in your notes, which Ms. DiPiro or Mr. Smith put before you, "Compulsive liar. I'll back you to the hilt" and all these other good things. By the time you wrote those notes you viewed yourself as an adversary of Mr. Anketell, did you not, sir?
A. I wrote those during the meeting.

Q. I got it. And by the time you wrote those notes you looked at him as an adversary, somebody you were willing and even eager to work against. Would that be true?

(Pause)

A. Can you repeat the question?

Q. Sure. By the time you wrote those notes down did you find yourself as -- feeling like you are an adversary to Mr. Anketell willing and eager to work against him with respect to the situation of the Smiths' project?

A. Really needing to get to the truth.

Q. Well, you also expressed a willingness to participate in litigation as you are here today. Is that not true, sir?

A. To get to the truth.

Q. Very well. In February what, if any, work did you do on the Marlboro Street project?

A. If any, very minimal. Maybe none.

Q. You did some interior demolition, didn't you?

A. I personally did not.

Q. The interior demolition was done during that time frame, wasn't it?

A. I don't recall.

Q. Were your employees Nate and Steve involved in that and throwing some debris out on the driveway during February?

A. No.

Q. Your testimony is that didn't happen?

A. No.
Q. Didn't happen -- it's not that you don't recall. It's your testimony there was no interior demolition done during the month of February. Is that true, sir?
A. Not that I can recall, no.
Q. Is it a matter you don't recall or you know it didn't happen?
A. I guess I don't recall that happening, no.
Q. Were you on the job every day or was it less frequent than that?
A. It was less frequent.
Q. Okay. By the way, you made the arrangement -- contractural arrangement with Lance Framing, did you not?
A. Repeat.
Q. Sure. You brought Lance Framing into the project, right?
A. I contacted him.
Q. Okay. And by way of Lance -- by it's -- it's your dealings with him and your agreements with him that brought him to the project, correct?
A. Provided by a mutual friend.
Q. Did you engage him to do the framing of the project?
A. I asked him to come look at the project.
Q. And did you and he agree upon whether or not he would do the job and what the price for the job would be?

A. I personally did not.
Q. Who did that?
A. Ground Up.
Q. So is it your testimony that Damian had the conversation with him or do you know?
A. Could you repeat that?
Q. Sure. It's your testimony that it was Damian who had the conversations that reached an agreement for Lance Framing to do the job or is it your testimony you don't know?
A. I believe at that point it was probably we met with him together to go over the project.
Q. Who's "we"?
A. Damian and I.
Q. And Lance?
A. Correct.
Q. Okay. You recall where this meeting occurred?
A. I believe it was at the site.
Q. Do you recall when this meeting occurred?
A. I do not.
Q. Do you recall who else was present, if anybody?
A. Damian, one of the guys, Nate.
Q. Do you know if he was there or is that just a maybe?
A. Just a maybe.
Q. But in substance in this three-way meeting you had already communicating with Lance and saying, "We've got a job.

How would you like to get involved?" right, or words to that effect?

A. I spoke with him on the phone and asked him to go out to the project.

Q. Okay. And when you spoke to him on the phone was there any conversation at all about scheduling and pricing?

A. Not at the time.

Q. Okay. Was there a written contract between either you and your company and Lance or Damian and Ground Up and Lance that you recall?

A. I do.

Q. Okay. Was there a written contract?

A. I believe there was.

Q. Did you sign it?

A. I did not sign it.

Q. Do you know if -- do you know if Damian signed it?

A. I don't know if he did.

Q. But this was a contract you have seen?

A. I have seen it.

Q. Did Lance sign it?

A. I don't know.

Q. Do you know -- recall anything about its contents?

A. No, I just don't recall if he signed it or not.

Q. I didn't ask if you recalled if he signed it. Do you remember any of the contents of the agreement? When to work, how much to pay, how many people to be on the job, anything about materials? Do you remember any of the contents in that writing?

A. Just the scope of work.

Q. Okay. And what's your general memory of the scope of work that was stated there?

A. To remove the roof, frame up the addition, install the windows, raise fascia, soffits.

Q. Okay.

A. Partition walls, plywood the floor.

Q. Now, by the time Lance Framing walked onto the job the interior demolition on the second floor had already been done, hadn't it?

A. Yes.

Q. Okay. So that was not part of the scope of Lance's job, was it?

A. No.

Q. Therefore, interior demolition had begun before Lance arrived, right?

A. Correct.

Q. You made a point of giving certain bank statements which were statements of Ground Up to Mr. Smith and Ms. DiPiro, did you not?

A. I did.

Q. Okay. Did you give bank statements of any other entities to them?

A. I don't understand.

Q. Sure. Well, you gave them the Ground Up bank statements that you had in your hands, right?

A. I did.

Q. And you had those in your hands because you were a signer on that account, weren't you?

A. No, I was not.

Q. Had you ever been a signer on that account?

A. No, I was not.

Q. How did those happen to come into your possession?

A. Damian gave them to me.

Q. And when did that occur?

A. At the end of March.

Q. And did you recall the circumstance or the reason that he did that? What led up to that?

A. Because I was trying to order windows.

Q. Okay. What did bank statements have to do with ordering windows?

A. There was no money.

Q. My question is, what were the circumstances that led to Damian giving you the bank statements. Why did that occur?

A. I asked him for them.

Q. Okay. What was your reason for giving them to Mr. Smith and Ms. DiPiro?

A. Because I felt they should know where their money went.

Q. Okay. Any other reasons?

A. Because I felt they should know where their money went.

Q. I asked if there were any other reasons besides that one.

A. No.

Q. Okay. Was it in an effort to aid them in a claim against Mr. Anketell?

A. I just felt they should know where their money went.

Q. Question, sir, is were you endeavoring to help them with a claim against Mr. Anketell.

A. If that would help them, then yes.

Q. Okay. So that was one of your reasons as well in addition to a search for the truth you thought it would be a good thing for you to help them pursue this claim, right?

A. I didn't know where they were going with it.

Q. My question is, is it something you were willing to take the initiate to do so?

A. To do what?

Q. Give them the bank statements.

A. Yes.

Q. Okay. They didn't come to you and say, "Mr. LeBlanc, can you please go get the bank statements for us?" You came forward and said, "Hey, look at this," right?

A. They asked me if I had any records.

Q. Okay. Did that occur before or after you spoke with them about the records you had?

A. I didn't hear you.

Q. Oh, strike the question. Now, it's your testimony that you were simply a contractor hired by Damian Anketell or hired by Ground Up and that was your sole capacity on this project?

A. At the time, yes.

Q. At what time, between November and April?

A. After the meeting in November I didn't step foot on the project until after January.

Q. That wasn't my question, sir. I'm asking if it's your testimony that your only role, your only capacity on that project was as a contractor hired by Ground Up --

A. Yes.

Q. -- as construction supervisor. And you did not regard yourself as a principal or a joint venturer with Ground Up. Is that true, sir?

A. True.

Q. Okay. By the way, what's the name of your own company, please?

A. Christopher J. LeBlanc.

Q. Okay. Incorporated?

A. No, sir.
Q. So no legal entity?
A. No, sir.
Q. Do you have any full-time employees?
A. Subcontractors.
Q. Do you have any full-time employees of Christopher LeBlanc, contractor?
A. No.
Q. During the meeting on April the 3rd do you remember Mr. Smith saying something about a baseball bat?
A. I don't recall.
Q. Okay. Thank you, sir.
MR. REGAN: I have no further questions.
MR. SMITH: Redirect, Your Honor?
THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Chris, did you schedule the meeting for April 3rd?
A. I did.
Q. Thank you. Also, I'm going to direct you to Exhibit X -- X, please.
A. What was it?
Q. X. It's not -- yes.
MS. DIPIRO: It's an X.
THE WITNESS: X.

MR. SMITH: X, please.

BY MR. SMITH:

Q. Take your time. It’s 7 (indiscernible).
A. Um-hum.
Q. Do you recognize this document?
A. It says Damian on the application.
Q. Do you see your name on it?
A. I do.
Q. Did you know that your name was on this document?
A. I did not.
Q. Who is -- do you recognize the signature on the document? That would be on page 4 of 7.
A. Damian Anketell.
Q. Thank you. Do you know your registration number offhand?
A. I don’t.
Q. That’s okay.
A. I believe it’s --
Q. That’s okay. That’s -- so you do not know that your name was on this document, correct?
A. I did not.
Q. Why is your name on this document, do you think?
A. Because he used my license number.
Q. He used your --
A. My construction super license number.

Q. Did Mr. Anketell, to your knowledge, have his own construction supervisor's license?

A. I'm unaware if he does.

Q. Did Mr. Anketell ask you to use -- if he could use your information on this document?

A. No.

Q. So he did not ask you?

A. No.

Q. Had you seen this before?

A. This document?

Q. Right.

A. No.

Q. So was the demolition done in March, Mr. LeBlanc?

A. What was that?

Q. No further questions, Mr. LeBlanc.

MR. SMITH: Thank you very much.

MR. REGAN: Recross, Your Honor?

THE COURT: You may.

MR. REGAN: Thank you.

RECROSS EXAMINATION

BY MR. REGAN:

Q. Mr. LeBlanc, on Exhibit X your name and your construction supervisor's license number appears, correct?

A. Yes.

Q. And your name is accurately stated, is it not?

A. Yes.
Q. And your address is accurately stated?
A. At the time it is.
Q. Did you live at 30 Smith Wife -- I made this -- I'm sorry, Southwick in Salem at that time?
MS. DIPIRO: What page is that?
MR. REGAN: 7 of 7.
MS. DIPIRO: Thank you.
THE WITNESS: Yes, that's my address.
MR. REGAN: Okay.

BY MR. REGAN:

Q. And the supervisor's license is accurately -- license number is accurately stated, is it not?
A. It is.
Q. And the name of the owner of the property, Tim Smith, is also accurately stated, is it not?
A. It is.
Q. And Damian Anketell has signed as the applicant. Is that true, sir? At least it appears that way on this document for you.
A. It appears that way.
Q. Okay. And you, in fact, were the construction supervisor for the project. Is that true, sir?
A. That is true.
Q. And in January at the time of this license was

applied for that was your intention and that's what you found your role to be, is that not true, sir?

A. I didn't sign the application.

Q. That's not my question, sir. You were the construction supervisor and it was your understanding in January that that was your role on the Marlboro Street property, true?

A. Yes, but I didn't pull the permit.

Q. My question, sir, only is whether or not that is a true statement that you were the construction supervisor and that was your understanding and intention in January of 2015.

A. Yes.

Q. Thank you, sir.

MS. DIPIRO: Redirect?

MR. SMITH: Redirect?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Referring back to page 1 of Exhibit X, Mr. LeBlanc, where you see your name on the top right.

A. Um-hum.

Q. Can you identify the word that comes before your name? Read that out loud for us.

A. "Contractor."

Q. So it doesn't say construction supervisor. It says

"Contractor."

A. Correct.

Q. Okay. Are you aware that Mr. Anketell has been charged with --

MR. REGAN: Objection, Your Honor.

THE COURT: Yeah. Where are you going with this? What -- I don't know --

MR. SMITH: Okay. Withdrawn.

THE COURT: Well, I --

MR. SMITH: That's fine.

THE COURT: I'm not telling you to withdraw it.

MR. SMITH: No, I'll just withdraw it.

THE COURT: Okay. I'm not going to encourage you to keep it in either but -- okay. All right. Anything further of Mr. LeBlanc?

MS. DIPIRO: Oh. I just wanted to ask Mr. LeBlanc if he knew that his name was going to be put on the building permit as a contractor.

THE WITNESS: I did not.

MS. DIPIRO: Thank you.

THE COURT: All right. Anything further, Mr. Regan?

MR. REGAN: I don't have any questions, Your Honor.

THE COURT: All right. Now, you know, these exhibits that you're referring to, you haven't moved their admission. They're not in, right?

MS. DIPIRO: Yes, I'd like to move them into admission.

THE COURT: Well, you have to tell me what it is and --

MS. DIPIRO: Okay.

THE COURT: -- tell me if you have a foundation for it and --

MS. DIPIRO: I would like to move Exhibit X into --

THE COURT: Evidence.

MS. DIPIRO: -- evidence.

THE COURT: Any objection?

MR. REGAN: I object, Your Honor, on relevance.

THE COURT: That's overruled. Any other -- that's all right.

And any other exhibits that you've --

MS. DIPIRO: I would like to --

THE COURT: -- used with this witness that you'd like to move in?

MS. DIPIRO: I would like to admit Exhibit P.

THE COURT: Which is what?

MS. DIPIRO: The notes that Chris LeBlanc made during our last meeting.

THE COURT: Okay. Any objection?

MR. REGAN: Out-of-court statement.

THE COURT: You mean hearsay. Is that what you mean?

MR. REGAN: Yes, Your Honor. Yes.

THE COURT: Yeah. Okay. So the question is that is there any exception because this is a statement of a non-party.

MS. DIPIRO: It lends to the fact that he misrepresented to us as well as --

THE COURT: You mean it supports your case.

MS. DIPIRO: It supports it. Yes.

THE COURT: That's not an exception, though, that I'm aware of.

MS. DIPIRO: It also lends to the monies being spent on something other than our project.

THE COURT: Again, that just shows that it's relevant. You know --

MS. DIPIRO: Okay. I mean, I --

THE COURT: Well, hold on.

(Pause)

All right. You don't -- I've looked at the exceptions to the hearsay prohibition and at the risk of being unduly helpful I haven't seen anything that jumps out at me. I don't want to have you make a big mistake, so I -- but I don't think you're not making a big mistake by not citing anything to me because I don't see anything that would support this. So I'm going to sustain Mr. Regan's objection --

MS. DIPIRO: Okay.

THE COURT: -- on the hearsay rule. Okay.

MS. DIPIRO: Okay.

THE COURT: That exhibit is not admitted.

MS. DIPIRO: I just wanted to refresh what exhibits -- we went over a couple others, like the use of funds spreadsheet. I wanted to just make sure that was admitted.

THE COURT: Well, Mary is the official --

MS. DIPIRO: I would like to have that --

THE COURT: -- keeper of the -- she knows when something is in. So what exhibit number are you talking about?

MS. DIPIRO: Exhibit J.

THE COURT: Is J in, Mary?

That's admitted.

MS. DIPIRO: Okay. Thank you. And the -- also Ground Up bank statements, which is B.

THE COURT: B. Is that in evidence? B.

THE CLERK: B as in boy?

THE COURT: Yes.

MS. DIPIRO: B as in boy, yes.

THE COURT: Okay.

THE CLERK: Admitted.

THE COURT: That's admitted. By our records, it's admitted.

MS. DIPIRO: And the affidavits for LeBlanc and Lance, which are -- is --

THE COURT: Yeah, I excluded those.

MS. DIPIRO: Oh, because they're hear --

THE COURT: They're hearsay.

MS. DIPIRO: Yeah.

THE COURT: And I allowed you to question them about the facts -- Mr. Anketell about the facts from those affidavits, but not to put them in evidence.

MS. DIPIRO: Okay.

THE COURT: You can cross-examine essentially with hearsay. You can do that.

MS. DIPIRO: Yes.

THE COURT: But -- and that's what you were doing.

MS. DIPIRO: Okay.

THE COURT: So I allowed that to be done, but that doesn't mean that the underlying document comes in evidence, so those are not -- those are excluded.

MS. DIPIRO: Okay.

THE COURT: Okay.

MS. DIPIRO: I think that covers most of them.

THE COURT: You're very cheery. Rarely do I allow -- exclude evidence and have someone be so happy about it.

MS. DIPIRO: Hey, I'll take what I can get.

THE COURT: Okay. All right. So that's where we are. Hold on here, everybody.

(Pause)

All right. So here's a list of what you mentioned but never moved to admit.

MS. DIPIRO: Okay.

THE COURT: F, K, I, AA and G.

MR. SMITH: Thank you.

THE COURT: Those are not in evidence. If you intend for them to be in evidence, then you need to move their admission.

MS. DIPIRO: Okay. Thank you very much. It appears that the affidavit is hearsay, so we'll keep F out. The Smiths deposit summary I would like to admit that into evidence.

THE COURT: What is that?

MS. DIPIRO: That is G.

THE COURT: G?

MS. DIPIRO: Yeah. And that is just a summary of when we made payments and the dates we made payments, as well as the balance in the Ground Up account, when we made those payments.

THE COURT: All right. So you used that with Mr. Anketell, right?

MS. DIPIRO: Yes, I did.

THE COURT: All right. And that's something that you prepared?

MS. DIPIRO: Yes, it is.

THE COURT: Okay. Well, any objection to that coming in?

MR. REGAN: I object to it coming in as an exhibit. It's been used as a chalk, but I do object to it as evidence, Your Honor.

THE COURT: It's a chalk, so it's --

MS. DIPIRO: Okay.

THE COURT: It's not in evidence. And it's not -- and I'll exclude it.

MS. DIPIRO: So we can view it?

THE COURT: You can use it.

MS. DIPIRO: Yeah.

THE COURT: You can use it as a chalk. You can ask witnesses about it, show it to them and show it to me. I know that's a -- seems like a silly distinction, but it is a big distinction.

MS. DIPIRO: And the other one was AA, which was the -- basically reconciling his use of funds spreadsheet versus --

THE COURT: I think we -- I already --

MS. DIPIRO: That's a chalk as well. Okay. No, I think I admitted everything that I'd like to. Thank you very much for that opportunity.

THE COURT: Okay. From now on, if you could, I can't really keep track of that, so somebody -- the other guy who's not asking the questions --

MR. SMITH: Right.

THE COURT: -- because I know how hard it is, that person should say, you know, remember to move the admission of that evidence, okay?

MR. SMITH: Understood.

MS. DIPIRO: Thank you, Your Honor.

THE COURT: All right. So let's take a lunch break, okay, and why don't we take -- so just so you know, here's my afternoon. Okay. I have some students coming in at 4:00 o'clock that have a moot court program that -- from BU in Suffolk that I told them that I would allow them to practice here for a big competition they're going to next week in New York City, so I'm going to do that.

Mr. Regan, you can put on a robe and you can help me, if you want.

MR. REGAN: Sounds like fun. The last time I did that, Your Honor, my brother Joseph asked if I hadn't taken my medications that day.

THE COURT: Were you a little harsh on the contestants?

MR. REGAN: I like to think I was enthusiastic, but --

THE COURT: That's another way to put it. Yeah. Anyway, I won't burden anybody with that. So I'm going to have to break at around 4:00 today.

All right. But now you've gotten through all your witnesses except for yourselves and finishing. The next thing will be Mr. Anketell's cross and then you'll have a chance to redirect him and then I'll hear from you guys. All right. And that's going to take us, you know, through tomorrow sometime.

For your plans tomorrow I'm going to start this tomorrow a little later than 9:30. I'm going to start it at 11:00. Okay. And we're going to do our level best to get through this case and finish it up. All right. But we won't inconvenience anybody other than the parties and counsel at this point.

So all right, Mr. LeBlanc, thank you for coming today.

MS. DIPIRO: Thank you, Mr. LeBlanc.

(Witness excused.)

THE COURT: All right. Let's take about a little more than a half-hour, say 45 minutes, so almost 2:00 o'clock, a little before. Okay.

MR. REGAN: Thank you, Your Honor.

THE COURT: All right. See you all in a little while. Yes, you can leave everything right here.

MS. DIPIRO: Okay. Thank you.

THE COURT: We're going to lock the door behind you. No one else will be in.

MS. DIPIRO: Thank you.

THE COURT: Okay. All right.

(Off the record at 1:12:49 p.m. Afternoon session in separate volume.)

* * * * * * * * *

I certify that the foregoing is a true and accurate transcript from the digitally sound-recorded record of the proceedings.

3/3/2016

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